Supreme Court, U.S.
FILED

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No. _____

In the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

Emmitt H. Stephens, Jr.,

Petitioner,

v.

Harold W. Ivey and Bonny Associates,

Respondents.

On Petition for a Writ of Certiorari to the
Court of Appeals of Georgia

PETITION FOR WRIT OF CERTIORARI

Millard Farmer
Counsel of Record

P.O. Box 1728
Atlanta, GA 30301
404 / 688-8116

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QUESTIONS PRESENTED

1. Whether the petitioner's right to freedom of speech, and his rights to equal protection and due process, were violated by the trial judge not being disqualified after there was a showing of bias against the petitioner and his counsel motivated by personal benefits to the judge?

2. Whether petitioner's equal protection and due process rights were violated by the trial court's order prohibiting the petitioner from presenting evidence to the jury relating to the conduct of the opposing counsel and the discriminatory conduct of the defendants toward the petitioner in the course of this civil rights litigation?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

EMMITT H. STEPHENS, JR.	*	
	*	
Petitioner,	*	
	*	
	*	
v.	*	No. _ _____
	*	
	*	
HAROLD W. IVEY and	*	
BONNY ASSOCIATES,	*	
	*	
Respondents	*	
	*	

On Petition for a Writ of Certiorari
to the Court of Appeals of Georgia

PETITION FOR WRIT OF CERTIORARI

Emmitt H. Stephens, Jr. respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Georgia.[1]

OPINIONS BELOW

The opinion of the Court of Appeals of Georgia (App., *infra*, 1a-5a), rendered on February 22, 1994, is reported at 212 Ga. App. 407, 442 S.E.2d 248 (1994). The denial of the petition for writ of certiorari by the Supreme Court of Georgia (App., *infra*, 1b) is reported at ___ Ga. ___, ___ S.E.2d ___ (1994).

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[1] The designations in this petition are to the record in the Court of Appeals of Georgia.

JURISDICTION

The judgment of the Court of Appeals of Georgia was entered on February 22, 1994. The Court of Appeals denied a timely motion for reconsideration on March 11, 1994. On May 9, 1994 the Supreme Court of Georgia denied the petition of certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C.§1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States.

It further involves the Uniform Superior Court Rule 25 of Georgia:

25.1. Motions.

> All motions to recuse or disqualify a judge presiding in a particular case or proceeding shall be timely filed: in writing and all evidence thereon shall be presented by accompanying affidavit(s) which shall fully assert the facts upon which the motion is founded. Filing and presentation to the judge shall be not later than five (5) days after the affiant first learned of the alleged grounds for disqualification, and not later than ten (10) days prior to the hearing or trial which is the subject of recusal or disqualification, unless good cause be shown for failure to meet such time requirements. In no event shall the motion be allowed to delay the trial or proceeding.

25.2. Affidavit.

The affidavit shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons and circumstances of extra-judicial conduct or statements, which demonstrate either bias in favor of any adverse party, or prejudice toward the moving party in particular, or a systematic pattern of prejudicial conduct toward persons similarly situated to the moving party, which would influence the judge and impede or prevent impartiality in that action. Allegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion or warrant further proceedings.

25.3. Duty of the Trial Judge.

When a judge is presented with a motion to recuse, or disqualify, accompanied by an affidavit, the judge shall temporarily cease to act upon the merits of the matter and shall immediately determine the timeliness of the motion and the legal sufficiency of the affidavit, and make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal would be warranted. If it is found that the motion is timely, the affidavit sufficient and that recusal would be authorized if some or all of the facts set forth in the affidavit are true, another judge shall be assigned to hear the motion to recuse. The allegations of the motion shall stand denied automatically. The trial judge shall not otherwise oppose the motion.

* * * *

STATEMENT OF THE CASE

Introduction

This is one of two petitions for writ of certiorari brought to this Court simultaneously in related, but separate, cases. This is the civil rights case during which Emmitt H. Stephens, Jr. (or "Emmitt Stephens") and his attorney, Millard Farmer, were held in criminal contempt of court during pretrial proceedings by Judge William B. Hill, Jr.

The other petition for writ of certiorari in this Court relating to the criminal contempt convictions is *Millard Farmer and Emmitt H. Stephens, Jr. v. State of Georgia*.

How The Issues Were Raised Below

The issues in the Questions Presented were raised on the direct appeal to the Court of Appeals of Georgia and raised in a Petition for Writ of Certiorari filed in the Supreme Court of Georgia. The violations of Petitioner's rights under the Constitution of the United States, as identified in the questions presented, were raised in each of the courts below.

Factual Background

Emmitt Stephens, a resident of Newnan, a predominantly white suburban town south of Atlanta, attempted to embark upon a business venture in October of 1989. He had been aware for some time that there was no facility in his home town in which African Americans could socialize in an amenable atmosphere. The only operating recreational establishments were restrictive white-owned private clubs or public accommodations where the environment was not accommodating to African Americans. Emmitt Stephens sought a location where he could operate an after-work and weekend recreational facility selling beer and wine for African Americans and persons unoffended by their presence. While Emmitt Stephens' business would not be a restrictive club, its focus would be the particular cultural and social needs of African Americans.

Emmitt Stephens found an easily accessible location in Ivey Plaza Shopping Center. There was space in this shopping center for lease by its owner, Harold Ivey and Bonny Associates ("Ivey"). Stephens contacted Calvin Tatum, who worked for Ivey. After relating to Tatum his plans for the space, on

October 24, 1989, Tatum agreed to lease Stephens the property. After giving Stephens the form lease to complete, Tatum agreed to a five year lease of $3,700.00 per month for the 12,000 square foot space; Stephens conditioned the lease only upon his obtaining a beer and wine license. Based upon this agreement, Stephens applied for and obtained a beer and wine license from the City of Newnan. Stephens also purchased expensive sound equipment for use in the business. Stephens met with Tatum on November 8, 1989 to discuss his proposed changes for the space; at this time he informed Tatum he had been granted his beer and wine license which was supposedly the only contingency upon which the lease was based. Stephens paid Tatum the non-refundable deposit of $3,721.00 and both parties agreed to meet the next day to sign the lease agreement.

In the midst of preparation for his occupancy, and unknown to Stephens, a portion of the proposed space secured by the $3,721.00 deposit and his agreement with Tatum was leased to a white tenant. The white tenant leased a part of the space promised Stephens at a substantially lower price per square foot than Ivey had agreed for Stephens to pay. This white tenant learned that Stephens was attempting to lease another property in the complex and complained to Ivey. From this point, Ivey began erecting a series of obstacles, making it impossible for Stephens to ever finalize the lease.

Stephens worked, in good faith, to comply with the changing terms and conditions of his lease, but to no avail. Ivey refused to fulfill the commitment to Stephens.

After Emmitt Stephens was denied access to the business location, litigation began and there was a series of appearing and disappearing counsel on behalf of Ivey. First, a local counsel represented Ivey.

Then, Jones Day, Reavis and Pogue ("Jones Day"), began representing Ivey. Later, Jones Day relinquished the case after a series of events. First, in answering the complaint Jones Day defended as appropriate, Ivey's usage of the term "colored" when referring to people who were members of Emmitt Stephens' race. (R-21). Next, just before the start of the deposition of Emmitt Stephens, Jones Day had an African American person dressed in a domestic worker's uniform come into the deposition room and offer to pour coffee. This uniform was stereotypical of the dress required of African American women when working in the home of white people in

the south at least until the late 1960's. An African American man employed by Jones Day, dressed in a uniform, also passed Emmitt Stephens in the reception room. Needless to say, the only persons at Jones Day wearing uniforms were African American persons. (R-79, 124, 198).

The next counsel for Ivey, Bill Major, met with counsel for Emmitt Stephens, apologized for the action of the previous counsel and promised to conduct open, informal and casual discovery. (June T-6-7). This relationship between both counsel continued for over fifteen months, until Friday, May 29, 1992, just before the case was scheduled to begin trial the following week. In the words of Judge Hill the parties were on two hours notice for trial (June T-26, ll. 12-16). Bill Major, who at that time was past due with completing his part of the proposed pretrial order, telephonically responded to requests for completion of the pretrial order by stating that both parties knew everything in the order and he only needed to get the wording correct. (June T-4, ll. 1,2). Bill Major even suggested that the parties dispense with a pretrial order. This offer to dispense with the order was rejected. Finally shortly before the close of business, near 5:00 p.m., Bill Major came to the office of Millard Farmer to discuss all aspects of the proposed pre-trial order, including exhibits, stipulations and disagreements about points of law. Bill Major parted by stating that he would call from his office with the names of a couple of witnesses that he would add to the proposed pre-trial order. No mention was made of their names at this time. It was not until some time later, after the court's official closing, that the pretrial order was faxed to Farmer's office with the injection of Campbell as counsel, and prominent African American business persons and politicians as potential witnesses for Ivey. This proposed pretrial order was the first, ever, mention of Campbell's representation of Ivey. (June T-4).

Counsel for Emmitt Stephens now knows, from the later testimony of Ivey's counsel, what he then only suspected, that the delayed proposed pretrial order was part of a scheme to bring Campbell into the case on the eve of the trial. Major deliberately intended to delay the trial, a delay he had been unable to obtain by oral motion. (June T-3). Major deemed the delay necessary because of the close time proximity of the trial to the Rodney King incident in California. Campbell was brought into the case to influence Judge Hill to delay the trial

and to obtain influential witnesses for Ivey to replace Ivey's prior named witness of Ira Jackson, an African American person in charge of concessions at the Atlanta airport who was formerly a prominent politician. (June T.- 56) (R-348). The motion to disqualify Campbell clearly stated that Ira Jackson's name had been removed as a witness because he was under investigation for fraud and political corruption.[2]

Counsel perceived that the injection at this last minute of Campbell and witnesses related to Campbell's official position with the City of Atlanta to be legally actionable fraud and deceit by Bill Major and actionable conduct by Campbell.

Campbell, who is now the mayor of Atlanta,[3] had been a member of the Atlanta City Council for over twelve years and thereafter enlisted influential Atlantans to be proposed witnesses for Ivey. All of these witnesses had political ties to the City of Atlanta; some had employment and major contracts pending with the City of Atlanta.

Counsel for Emmitt Stephens filed the Motion to Disqualify Campbell; the motion was as emotionally charged as Bill Campbell's entry into the case. The motion was entitled, "Motion to Disqualify William 'Bill' 'Judas' Campbell as Attorney for Harold W. Ivey and Bonny Associates, Together with a Request for Other Relief." (R-216).[4]

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2 It was widely rumored in Atlanta at that time that Ira Jackson was involved with taking kickbacks for his duties related to the operation of the concessions at the Atlanta airport. He has since been convicted in federal court for crimes related to his official corruption. In his federal criminal trial, the government's witnesses against Ira Jackson also testified that he had made illegal payments to Campbell, the counsel for Ivey. Campbell was not indicted.

3 Understandably, Judge William B. Hill was chosen by Campbell to administer his oath of office as Mayor of Atlanta before a large community celebration that was widely publicized and televised.

4 Both Judge Hill, as a former Georgia Assistant Attorney General in the Criminal Division, and Millard Farmer, who has represented many criminally accused persons, know well both the

On the Monday morning when the disqualification of Campbell motion was filed, the start of court was delayed due to an electrical power outage in the courthouse. Bill Campbell was outside the courthouse, along with Bill Major, Emmitt Stephens and Millard Farmer. Bill Major and Bill Campbell had been delivered a copy of the motion on the previous Sunday evening. Bill Campbell, outside the courthouse, hostilely

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law and factual practice of the use of "slang names" in the courtrooms in Georgia. Judge Beasley, the presiding judge who wrote the opinion for the Court of Appeals of Georgia is also familiar with the permissive use in court of slang terminology that identifies the behavior of persons. Judge Beasley was also a former Assistant Attorney General of the State of Georgia. To just highlight a few of the permissible designations, the following appellate cases are cited:

> "*Thug*," -- no problem, when used by prosecutors in closing arguments if it is a reasonable inference or deduction from the evidence. *O'Bryant v. State*, 222 Ga. 326, 149 S.E.2d 654 (1966).
>
> "*Killer of the worst sort,*" -- no problem. "Figurative speech has always been regarded as a legitimate weapon in forensic warfare if there be evidence before the jury on which it may be founded." *Hyde v. State,* 196 Ga. 475, 26 S.E.2d 744 (1943), quoting *Taylor v. State,* 121 Ga. App. 348, 354, 48 S.E. 303 also, *Stencil v. State,* 158 Ga. App. 147, 279 S.E.2d 457 (1981).
>
> "*Brute, beast and animal, and a mad dog,*" -- no problem, as long as evidence supports it. *Miller v. State*, 226 Ga. 730, 731, 177 S.E.2d 253 (1970).
>
> "He said he was a man of good character but you know *Judas* was too until he got his thirty pieces of silver" -- no problem. *Quaid v. State*, 132 Ga. App. 478, 485, 208 S.E.2d 336 (1974) (emphasis supplied).

Ironically, with the criminal contempt conviction by Judge Hill in this case, Millard Farmer has been on both sides of the "slang name" controversy in this state. *Cf., Farmer v. Holton,* 146 Ga. App. 102, 245 S.E.2d 457 (1978), 440 U.S. 958 (1979), where the prosecutor would not call Millard Farmer's African American client "Mr.". In law, both of the contempt convictions do not lend to such a simplistic analysis; however, in reality, both are plain and simple -- the permissibility of the use of "slang names" is determined by who the user is, rather than what the name is.

approached Farmer, pointed his finger at him and shouted that Farmer was a "white plantation mentality racist" and other such derogatory terms. This was done in the presence of a sizeable number of attorneys, Emmitt Stephens, members of the news media, by-standers and possible jurors. (R-553). Bill Major urged Campbell to move away from Farmer and Stephens, with Major telling Campbell that Farmer was a "worthless individual." (March T-24, ll. 11, 12).

At a hearing on the motion to disqualify Campbell that occurred later in the morning, Campbell continued part of his attack on Farmer by making several unreprimanded references to the mental competency of Farmer in the following exchanges:

> I certainly believe there may need to be some process for determining whether or not Mr. Farmer is mentally competent, given the motion that has been filed in this case. (June T-7, ll. 22-25)

* * * *

> . . . Mr. Farmer perhaps is mentally incompetent and at the end of the twilight of his career. (June T-11 ll. 15-17.

* * * *

> . . . Again, it indicates the mental competence of Mr. Farmer. (June T-25 ll. 24-25).

The motion was heard and denied by Judge Hill on the same day of its filing, June 1, 1992. Judge Hill was livid about the attempt to disqualify Campbell. After publicly, verbally reprimanding Farmer, Judge Hill *sua sponte* advised Campbell to seek sanctions against Farmer and Stephens:

> The court is extremely concerned by the nature of the accusations indictments and apparently derogatory representations made therein by counsel for the plaintiff against the fellow member of the Bar.

> These weighty and damaging allegations have been hastily made by counsel for the plaintiff without benefit of even a marginal investigation by plaintiff's counsel prior to reducing the same to writing and cavalierly making the same a matter of record for public consumption. This court finds this conduct to be less than responsible. The court will not tolerate it, and the Court invites counsel for the defendant to file in as expeditious manner as possible a motion for appropriate sanctions to be directed to and against counsel for the plaintiff and plaintiff himself. Counsel, I want you all to file that motion as quickly as you can. (June T-18-19).

Bill Campbell stated, "Your Honor, that [motion for sanctions] will be filed by the end of the day." (June T-19). This statement was part of a pattern Campbell established for himself in this case, a pattern of speaking without knowledge of law, and a pattern of not stating truthfully either his past or future acts. Campbell acted as one would expect a politician to act in his involvement related to the motion to disqualify him. Campbell did not file the motion for sanctions until some 30 days later.

Neither Judge Hill nor Campbell revealed at the time of the first motion hearing that they had engaged in an *ex parte* conference before the hearing. Farmer at this time was totally unaware of the *ex parte* conference that had occurred before the hearing between Judge Hill and Bill Campbell.[5]

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[5] The Court of Appeals of Georgia, in *Arnau v. Arnau,* 207 Ga.App. 696, 429 S.E.2d 116 (1993) held:

> . . . There is no transcript of the ex parte meeting included in the record and therefore nothing to support Ms. Arnau's argument. Furthermore even if such a showing had been supported by the record, the fact that ex parte communication is merely cumulative would not make the consideration of such evidence harmless error. Ex parte communications are presumed to have been in error. See Uniform Superior Court Rule, 4.1.

Judge Hill, in his order on Campbell's disqualification, referred to the hasty preparation of the motion by Millard Farmer. This hasty preparation was made necessary by Bill Major, who did not inform Farmer of Campbell's entry into the case until after 5:00 p.m. on Friday, with the case on a possible two hour call for any day the following week. The case was number 3 on a two week calendar.

After the first hearing, the onslaught of derogatory remarks by Ivey's counsel continued with Campbell verbally attacking Emmitt Stephens outside the courtroom in front of the jury assembly room on the fourth floor of the courthouse for hiring "this white redneck plantation mentality lawyer." (March T-39 ll. 17-20).

This contact with Emmitt Stephens by Campbell was a direct ethical violation. Campbell angrily approached Stephens and made these and other derogatory comments about Farmer to Stephens directly. (R-480). Campbell, during his comments, engaged in an altercation he initiated with Stephens outside the presence of Stephens' counsel. Stephens was "intimidated by Mr. Campbell's behavior." (R-480, l. 8).

When questioned about the statement, Campbell, under oath at the March hearing, some nine months later, stated, "I don't know if I said white redneck because that is probably duplicative, but I believe I said something along the line of why would you hire this plantation mentality lawyer, there are plenty of black lawyers you could have hired." (March T-39, ll. 17-22).

Campbell, after the first motion hearing in June, followed Judge Hill's request and filed a premature Motion for Sanctions. This motion was heard on September 8, 1992, some three months after the motion to disqualify Bill Campbell had been denied. (Sept. T) (R-350). Again, at this hearing, neither Campbell nor Judge Hill revealed the *ex parte* conference in which they had engaged before the June hearing.

In the September 8, 1992 hearing on the motion for sanctions, Farmer strongly emphasized to Campbell and Judge Hill that the motion for O.C.G.A. §9-15-14 sanctions was premature. Judge Hill could not deny the correctness of Farmer's position on the prematurity of the motion. Farmer emphatically and frequently stated that Judge Hill, himself, had been reversed on this very issue only a month earlier by the

Court of Appeals in *Adams v. Moffatt, et al.*, 204 Ga.App. 314, 419 S.E.2d 318 (1992). (R-458). (Sept. T. 23, ll. 9-21).

Campbell appeared to be a stumbling legal novice in understanding the law relating to §9-15-14 sanctions. This legal blunder by Campbell was embarrassing for him before the media and also to Judge Hill, who had ordered the motion filed.

Campbell, in the motion for the sanctions, swore that he spent five and one-half hours doing legal research, consulting with co-counsel and editing the motion for sanctions (R-341-343); Bill Major swore he had spent eight hours conducting legal research and preparing the motion for sanctions. (R-336-339). The hearing exhibited that both Campbell's and Major's legal research skills were pedestrian or that their affidavits were perjurious.

A member of the news media was present at the September 8, 1992 hearing when Judge Hill issued the order to change the "William 'Bill' 'Judas' Campbell" disqualification motion that had been decided more than three months earlier. This change was ordered as a face-saving tactic for Campbell's inept legal skills at the hearing. Judge Hill, after being confronted with his recent reversal, without sanctions, and of his "own initiative" fashioned what would appear to be a victory for Campbell in the naive eyes of the media. Judge Hill then issued the order for which Millard Farmer and Emmitt Stephens were convicted of violating. App., *infra,* 1c-2c.

Following Judge Hill's mandate, Farmer amended the Motion to Disqualify Campbell. (R-391). The motion to disqualify William "Bill" "Judas" Campbell was changed as indicated in App., *infra*, 1d-4d.

Bill Campbell[6] filed a motion to strike the modified insert form the record, ostensibly on the grounds that the wording was "immaterial, impertinent and scandalous," and that it violated the judge's order. In response to the Motion to Strike, Farmer, among many things, emphasized that the motion to strike was ill-founded since there had been full compliance with Judge Hill's order to strike certain references to "Bill" "Judeas" [sic]. (R-453). This response clearly stated some of the ways that counsel for Ivey were pandering to the bias of Judge Hill against Farmer. (R-465, 466).

Judge Hill, some five months later, conducted a hearing (March T). At this very proceeding at which Farmer and Stephens were convicted of criminal contempt, Campbell, speaking to and of Farmer, on the record and in the presence of Judge Hill, stated, "The person that stands before me now is a shadow, a *cowardly shadow* ---" (March T-26).

Then, Campbell stated, "In your typically *cowardly* way in trying to insinuate that there was any payment of government money . . . I pay for my own phone, my own car phone, Mr. Farmer, just so that I won't have to deal with *cowardly* individuals like yourself asking me about it." (March T-28).

Campbell ranted more, but as another example, Campbell, in court, just before Judge Hill pronounced he was going to convict Farmer and Stephens, Campbell reiterated to Farmer, " . . . I depict you as cowardly in life, in my view of life." (March T-25).

Bill Campbell then used two occasions to remind Judge Hill about what Campbell and Judge Hill thought was a pending charge against Millard Farmer in a death penalty case in Texas

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6 William C. Campbell is referred to here and was referred to during the trial as "Bill Campbell" as this is the name used by him in all of his political campaigns. The court order that the "Bill" be stricken from the motion was to help Campbell conceal the fact of his representation of Ivey in a racial discrimination case for political purposes in his campaign for election. The presiding Judge of the Court of Appeals of Georgia who wrote the opinion in this case referred to Campbell as "Bill," in a friendly manner, during oral argument. This Court of Appeals judge, while employed by the Office of the Attorney General of Georgia, professed to be the drafter of the Georgia post-*Furman* death penalty statute.

for tampering with a witness. Neither Campbell nor Judge Hill knew at the time that a federal court had granted a temporary restraining order against the prosecution that has now become a permanent injunction. Judge Hill, who has spent most of his professional career litigating death penalty cases for the State of Georgia, clearly knew the contempt conviction he was to impose would be detrimental to Farmer in Texas. After hearing evidence on the motion to strike, the convictions for criminal contempt occurred.

Disqualification of Judge Hill

The Supreme Court of Georgia began the new era in Georgia for the standards of judge disqualification in *The State v. Fleming*, 245 Ga. 700, 267 S.E.2d 207 (1980). Millard Farmer represented Larry Donnell Fleming in a death penalty case when the District Attorney attempted to, and did, disqualify the trial judge because the trial judge was "personally biased and prejudiced against the district attorney." The District Attorney in that case presented a conclusory affidavit that contained real "ad hominem attacks" compared to the three sets of affidavits in this case.

Fleming set a new standard in Georgia, which became the basis for the Uniform Supreme Court Rule. *Fleming* held:

> We hold the federal rule on motions to recuse to be the most acceptable, that is, when a trial judge in a case pending in that court is presented with a motion to recuse accompanied by an affidavit, the judge's duty will be limited to passing upon the legal sufficiency of the affidavit, and if, assuming all the facts in the affidavit to be true, recusal would be warranted, then another judge must be assigned to hear the motion to recuse.

Supra, 256 Ga. at 702.

The Uniform Superior Court Rule specifically directs the proposed judge for disqualification to:

> . . . make a determination, assuming *any* of the facts alleged in the affidavit to be true, whether recusal would be warranted.
>
> If it is found the motion is timely, the affidavit sufficient and that recusal would be authorized *if some or all of the facts* set forth in

> the affidavit are true, another judge shall be assigned to hear the motion to recuse.

(U.S.C.R 25.3)(emphasis supplied).

It is after this time, that the moving party is entitled to have compulsory process to present evidence to flesh out the claims and facts set forth in the motion and affidavit.

The first motion to disqualify Judge William B. Hill[7] was filed on July 28, 1992, only after Judge Hill's deep-seated animosity manifested itself with the act of holding Emmitt Stephens' case off of the trial calendar which was published on July 23, 1992. Judge Hill intentionally delayed the trial, something he pledged not to do on May 13, 1992 during an unrecorded meeting with Bill Major and Millard Farmer.

Essentially, the sworn facts in the first motion to disqualify stated the animosity of Judge Hill towards Farmer was affecting his judicial decisions that affected Emmitt Stephens.

During the May 13 meeting, before the appearance of Bill Campbell, Judge Hill denied Bill Major's oral motion for continuance and agreed that Emmitt Stephens had the right not to have the trial delayed. Additionally, Judge Hill assured all counsel that past histories between him and Millard Farmer would have no bearing on this case. The fact that Stephens should have been number one on the August 17 calendar published on July 23, 1992, but was not listed at all, everything that Judge Hill stated at the May 13, 1992 meeting was rhetoric. (R-310).

While Millard Farmer had suspicions regarding Judge Hill's pretense of impartiality considering their past history and

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[7] There were three motions to disqualify Judge Hill. The first motion is R-310, the order denying it is R-326, and the motion seeking a certificate of immediate review is R-333; the second motion is R-352, the order denying it is R-367, and the motion seeking a certificate of immediate review is R-375; and the third motion, which was also a constitutional attack on a Uniform Superior Court Rule and a statute, is R-569. This motion was substantially documented, R-569 through R-849; the order denying it is R-1147, and the motion seeking a certificate of immediate review is R-1153. The order denying this is T-3.

his behavior at the presentation of the motion to disqualify Bill Campbell, these suspicions could not be given any legally significant credence until July 23, 1992, when Judge Hill withheld the case from the trial calendar, thereby achieving the delay that Bill Major wanted from the outset.

The entry of Bill Campbell in the case had accomplished Bill Major's goal of delaying the trial. (R-350-352).

Bill Campbell followed Judge Hill's suggestion and filed a Motion for Sanctions. It was not heard until September 8, 1992. (Sept. T).

Due to the prematurity of the Motion for Sanctions under O.C.G.A. §9-15-14, Judge Hill could not offer Bill Campbell direct relief, but gave Bill Campbell an order that would appear to be a win to the media.

After the September 8, 1992 hearing on Bill Major's and Bill Campbell's motion for sanctions against Millard Farmer, the second motion to disqualify Judge Hill was filed on September 14, 1992. During the hearing, Millard Farmer had expressed to the court his suspicion that Bill Campbell and Judge Hill and/or his law clerk had participated in *ex parte* communications before the June 30 hearing on Emmitt Stephens' motion to disqualify Bill Campbell. Neither Bill Campbell nor Judge Hill denied the allegations. At the September 8, 1992 hearing on Campbell's motion for sanctions, Judge Hill permitted Bill Campbell to engage in abusive verbal conduct against Farmer. At the termination of this hearing, Judge Hill knowingly, falsely stated that the reason the case had not been placed on the calendar was because of Farmer's Motion to Reopen Discover, which had, in fact, been withdrawn, (R-920), and the reason for delaying the trial was because Judge Hill wanted to grant favor to Bill Campbell. Judge Hill permitted and committed these dubious acts in order to continue the prevention of Stephens' case from being tried.

The third motion, entitled, "Motion Three to Disqualify William B. Hill as Judge and Constitutional Challenge to the Limited and Delayed Review on a Judge's Disqualification,"[8]

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[8] The Court of Appeals held that Emmitt Stephens abandoned his first and second motions for disqualification by not presenting argument or authority to support the enumeration of error. While the position of the Court of Appeals was incorrect, as the lead paragraph

was filed on March 8, 1993, after Judge Hill, at a hearing on March 1, 1993, held Stephens and Farmer in contempt for acts committed by Farmer. At this hearing, Campbell admitted to having *ex parte* communications with Judge Hill or his law clerk. Even though his version was not truthful, it confirmed part of the basis for Farmer's second motion to disqualify Judge Hill and the motion to disqualify Bill Campbell. Under oath, Campbell also admitted that he had made a false statement regarding the agreed payment of fees by Ivey. (R-475-478). Judge Hill took no action against him. Bill Campbell, at this

---

in the argument and citation of authority section of the brief stated, "each of three motions" (Not just as the court may have chosen to read it, only "motion three.") Essentially the same factual description of the first and second motion to disqualify Judge Hill was presented to the Court of Appeals as presented here in this Statement of the Case. It is irrelevant, except in appraising the fairness of the court below in evaluating this claim, that the court did not rule upon the first or second disqualification motions. The court did rule upon the third disqualification motion and this motion incorporated the facts contained in the first and second motions to disqualify. The brief in the Court of Appeals contained the following paragraph, in all capital letters, after the Arabic number "1" under Argument and Citation of Authority: "THE COURT ERRED IN DECIDING EACH OF THE THREE MOTIONS TO DISQUALIFY THE JUDGE BECAUSE THE JUDGE FAILED TO RECUSE HIMSELF, FAILED TO REFER THE MOTION TO ANOTHER JUDGE, FAILED TO GRANT THE MOTION FOR DISQUALIFICATION, AND FAILED TO GRANT A CERTIFICATE OF IMMEDIATE REVIEW. IN ADDITION TO BEING ERRONEOUS AS A MATTER OF LAW, THESE ACTS BY THE COURT DENIED APPELLANT RIGHTS PROTECTED BY THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, THE FREEDOM OF SPEECH PROVISION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND RIGHTS PROTECTED UNDER GEORGIA CONSTITUTION 1983, ART. I, SECT. I, PARA. VII, AND ART. I, SECT. I, PARA. V. " (Emphasis supplied).

March 1st hearing, blatantly engaged in baseless derogatory name-calling. This conduct was not in furtherance of a legal issue. While Judge Hill had made Farmer redact portions of the then moot motion to disqualify William "Bill" "Judas" Campbell, Judge Hill at no time reprimanded Bill Campbell for his personal insults against Farmer, all of the insults by Campbell were unrelated to any litigation issue. Judge Hill, at the hearing, again falsely stated that the trial was delayed because of Farmer's motion to reopen discovery. When challenged by Farmer on this statement, Judge Hill prohibited his calendar clerk, Nell Knight, from offering a sworn statement to validate Farmer's statement and prohibited her from discussing on the record the scheduling of cases. (March T-165-168).

This third motion to disqualify Judge Hill, was extremely comprehensive. (R-569-849). The motion was sworn to be truthful by both Emmitt Stephens and Millard Farmer. Judge Hill found:

> "This Court finds that affiant's affidavit fails to clearly state facts and reasons sufficient to warrant and support a belief that a bias or prejudice exists, and therefore the affidavit in support of this motion to recuse is legally insufficient." (R-1150).

This finding is so ludicrous that only a small sample of the motion which was sworn to as the affidavit is quoted here. The motion, without attachments, is App., *infra*, 1e-78e.

> "(b) . . . Hill has held Emmitt Stephens . . . in willful contempt of court for conduct that he did not commit and conduct that was not supported by even a scintilla of evidence . . . . for the purpose of harassing, embarrassing and intimidating this litigant. (R-570).
>
> (d) . . . Hill held Millard Farmer in contempt of court by knowingly making untruthful statements in a finding of fact. (R-571).
>
> (e) . . . Hill has intentionally and knowingly used the Fulton County Daily Report . . . for the purpose of personal and professional ridicule of Millard Farmer and for unethical

reasons. . .(R-571).

(f) . . . Hill has made knowingly false statements in the record of this case for the purpose of prejudicing the rights of Emmitt Stephens. (R-571).

(m) . . . Hill . . . has sacrificed the constitutional rights of Emmitt Stephens . . . for personal gain to himself. The acts of William B. Hill in this case violate his oath of office. (R-573).

. . . Hill, for personal gain, has been allowing William "Bill" Campbell to engage in numerous acts of unchecked, unethical conduct, while *sua sponte* engaging in attacks against Millard Farmer. (R-596).

. . . Hill Is Not Placing This Case On The Trial Calendar Because Of His Bias Against Millard Farmer. (R-600).

Emmitt Stephens has been abused by Judge William B. Hill to the extent he was held in willful contempt of court on Monday, March 1, 1993 for conduct which under no stretch of the imagination could be held to be his conduct or impermissible conduct on his part. (R-640).

(a) William B. Hill is pandering to William "Bill" Campbell, a local politician, to gain political support in William B. Hill's goal to obtain a more important judgeship than his present Superior Court judgeship. (R-641).

(d) William B. Hill is continuing in this case his pattern of trying to prevent African American persons from obtaining equality in the court system; this conduct William B. Hill engages in for personal benefit to himself. (R-642).

> (c) William B. Hill has allowed William "Bill" Campbell to verbally abuse Emmitt Stephens and his counsel on numerous occasions. This continues to occur, despite continuous attempts for relief from the court. (R-643).
>
> (d) William B. Hill uses the lack of understanding of the law by reporters for the Fulton County Daily Report to create publicity that is little more than character assassination of Millard Farmer. (R-643).
>
> William B. Hill chose to find Millard Farmer in contempt for many reasons. One important reason was that he felt it would be detrimental to him in defense of his reputation and client in proceedings in Texas where (he) is not known. These Texas proceedings had been discussed in the March 1, 1993 proceeding by William "Bill" Campbell. (R-645).

The above quotes are from the sworn motion three to disqualify Judge Hill. (App., *infra*, 1e-78e).

REASONS FOR GRANTING THE WRIT

Considerations For Granting The Writ Applicable To Both Questions Presented

There is a major problem that exists throughout most of the states affected most by changes brought about by this Court's allowance of litigants to attempt the enforcement of racial and sexual equality in the courts. The problem for potential litigants is their right to obtain counsel. Litigants without large bankrolls go door to door looking for lawyers to accept their case on a contingent fee basis. Simply stated, they cannot get lawyers.

The reasons civil rights litigants in the South can't get lawyers is because the deep-pocketed defendants expend hundreds of thousands of dollars and many years of litigation to starve off the plaintiffs before the issues reach the trial calendar. The lawyers representing the defendants in these actions are from well-healed, politically connected law firms with substantial judicial influence.

This case is a headline example of the mistreatment a civil rights litigant can receive in the judicial system.

There is a need for this Court to grant certiorari in this case to send the message to litigants that they will not be abused during the litigation process and the message to the lawyers that there will be a chance of a fair trial to recover for the fruits of their labor.

Politicians like Bill Campbell can be bought in every venue; justice should not be marketed to the litigant with the most financial resources.

1.

The petitioner's right to freedom of speech, and his rights to equal protection and due process, were violated by the trial judge not being disqualified after a showing of bias against the petitioner and his counsel motivated by personal benefits to the judge.

As detailed in the statement of facts, the hostility that exists between Judge Hill and Millard Farmer was long standing.

Judge Hill refused to send any of the motions for his disqualification to an independent judge, refused to afford any type of hearing and summarily denied each motion without granting a certificate of immediate review to the appellate court.

Neither Judge Hill nor the Court of Appeals below adhered to the law requiring that the disqualification motions be sent to an independent judge. The trial court and the Court of Appeals had to accept the affidavits as truth. The Court of Appeals even overlooked the contents of the third motion for disqualification, App., *infra*, 1e-78e, which incorporated by reference and physically included the affidavits used in the first two motions for disqualification of Judge Hill.[9] This sworn fact in the disqualification motion about the *ex parte* conference is law of the case for the disqualification issue. It is not relevant to the disqualification motion that Bill Campbell

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[9] The motion stated as follows:

In support of this motion three to disqualify William B. Hill, there are numerous attachments incorporated and made a part of this motion. The attachments that are the pleadings of Emmitt Stephens, the plaintiff, and the statements of Emmitt Stephens and Millard Farmer contained in the pleadings and transcripts of proceedings, are included for both historical purposes and for the truthfulness of the statements . . .

(R-581)(emphasis added). (Motions 1 and 2 affidavits were attached).

may have later given his version of what occurred at the *ex parte* meeting; Client was entitled to show the truth.

In this case there is an important reason Judge Hill should have been disqualified from being the judge to determine the fate of Stephens. In clear terms and language, Judge Hill was trying to curry favor with Bill Campbell. Judge Hill was currying the favor for his personal gain and benefit. Judge Hill, on numerous occasions, has attempted to gain political support for an appellate court appointment, and even a federal appointment. To obtain these goals, Hill needs the support of politicians such as Campbell.

This Court has dealt with this type of constitutional due process violation in *Tumey v. Ohio*, 273 U.S. 510 (1927), and *Ward v. Village of Monroeville,* 409 U.S. 57, 60 (1972). Quoting *Tumey* at 534, this Court held the test of impartiality is whether the judge's situation is one "which would offer a possible temptation to the average [person] as a judgment to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused."

This Court has also extended this reasoning to civil cases in a unanimous opinion by Justice Burger in *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 822 (1986). There, the Court concluded that "a reasonable formulation of the issue is whether the situation is one "which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true." (quoting from *Ward* at 60).

This Court, in *Liteky v. United States,* ___U.S.___, No. 92-6921, has recently reviewed the federal statutory bases for a judge being disqualified. The burden here is quite different in that petitioner has the burden of demonstrating a constitutional basis for the disqualification. The courts below, in not following the state procedure, was, in and of itself, a part of the constitutional violations that have affected petitioner.

Courts have recognized statements made in the presence of the court and outside the presence of the court are protected by the guarantee of freedom of speech of the First and Fourteenth Amendments to the United States Constitution. Only statements creating a clear and present danger to the orderly administration of justice, are not so protected. The danger must be absolute. Neither an "inherent tendency" nor "reasonable

tendency" is enough. *Bridges v. California,* 314 U.S. 252, 272 (1941).

The restraints placed upon a litigant by the court's orders, the operation of this statute and this rule were clearly a violation of their guarantee of free speech under the First and Fourteenth Amendments to the United States Constitution.

William B. Hill's intent, in part, in holding Millard Farmer and Emmitt Stephens in contempt was to place a chilling effect upon their criticism of Bill Campbell as a person who was betraying the cause and constitutional quest for racial equality; and their criticisms of William B. Hill for failing to disqualify himself and failing to allow a full and fair presentation of the evidence. Clearly, such conduct on the part of William B. Hill is violative of the dictates of the First Amendment.

A judge that uses his official position to obtain personal gain for himself should be disqualified from presiding over the proceeding he is using for his or her personal benefit.

2.

Petitioner's equal protection and due process rights were violated by the trial court's order prohibiting the petitioner from presenting evidence to the jury relating to the conduct of the opposing counsel and the discriminatory conduct of the defendants toward the petitioner during this civil rights litigation.

Bill Campbell is a well known African American politician in Atlanta, where the case was tried. His representation presented Ivey with the facade of a racially fair entity. The witnesses that testified for Ivey, because of their relationships with Campbell, perpetuated the myth of Ivey's racial fairness.

Ivey's over one hundred million dollar net worth provided Campbell not only substantial attorney fees for his representation, but it also provided Campbell financial resources for his upcoming race to become the Mayor of Atlanta.

Bill Campbell sold to Ivey something that belonged to the citizens of Atlanta. All persons in Atlanta are due the good will and benefits of people who contract and do business with

the City. These benefits are not the property of politicians to sell.

Stephens, to prevail in this litigation, had to pierce the facade of Ivey's racial fairness. Stephens had to show the triers of fact how Ivey, even during this litigation, first employed lawyers who defended Ivey's usage of the term "colored" in designating Stephens' race, and how Ivey employed lawyers that further had a uniformed African American employee dressed in the symbolic uniform of a bygone era to offer Stephens coffee at a deposition.

Stephens had to show the triers of fact how Campbell chastised him for not employing a "black lawyer" in front of the media, and then came to the courthouse and secretly used his peremptory strikes to eliminate as many African American persons as possible from the jury.

Stephens had to show these things because Campbell's reputation in Atlanta was that of an African American person who had fought for the civil rights of other African American people.

Emmitt Stephens attempted to present evidence about the discriminatory conduct during the litigation of Ivey and his counsel. This evidence was important to the intent of Ivey to discriminate.

There was an attempt by Bill Campbell to limit this testimony by an oral motion that was presented just before the jury was selected:

> Mr. Campbell. . . . we simply would like an oral motion in limine with regard . . .as well as no references as to motivation for entry into this case, anything other than the facts and the evidence that is to be presented with regard to the transaction between Mr. Stephens and Harold Ivey and Bonny Associates we would ask this court to so rule at this time so that that issue does not prejudice the defendant's case
>
> . . .

(T-7,8).

As the trial progressed, Millard Farmer, out of the presence of the jury, sought and obtained a directive from Judge Hill about evidence he would allow:

Mr. Farmer: . . . I have got a matter that before we take another break that I need to go into with this witness . . . it is a part of our case but because of some previous rulings by the court . . . that part of our case is the continuing nature of the discrimination against Emmitt Stephens and the discrimination that has existed with him through the lawyers in this litigation that have been employed by Bonny and Associates and Harold Ivey and acting as their agents in this discrimination and it is that area that I want to begin questioning . . . I want to go into the discrimination that exists against Mr. Stephens at the first deposition . . . I want to get into the discrimination that occurred to Mr. Stephens with reference to the employment and the time of the employment of Mr. Campbell in the case . . . those two events are the two events that I am worried about, or those two time frames are the two time frames that I am worried about as far as their severe objections . . .

Mr. Major: My position is that it would be irrelevant, immaterial, highly prejudicial and it would not relate to any justiciable issue in this case, Your Honor.

The Court: I sustain your objection . . .

Mr. Farmer: Under those circumstances, your Honor, I would like to make an offer of proof or have the court make a clear statement that it understands that I am talking about the events that occurred during the time of taking his deposition. . . I want to go into, Mr. Major and Mr. Ivey hiring Mr. Campbell and the Court is very much aware of all of the issues around that that we have tried to litigate through various motions, all of those issues or any part of any of these issues that wee would be allowed to go into and about the timing of the employment of Mr. Campbell, anything in that area that we could go into. I want if the Court tells me that we are not to go

into it, I just want it clear that we are not going into it because of their objection.

The Court: That is right. You are correct; the record is clear.. I understood that to be your request as far as your examination.

Mr. Major: Yes.

* * * *

The Court: . . . As far as I see the relevant time frame here and the relevant point of inquiry is whether Mr. Stephens was wrongly denied a lease based upon his race. What has happened subsequent to that time, the litigation in this case, what lawyers were hired, what happened during depositions, all of that information I have sustained an objection to it as being irrelevant. It doesn't matter who was hired to represent either the Plaintiff or the Defendant. What I want to know is up until the point that he was denied the lease. . . .

(T-Excerpt, 2-6).

The evidence Emmitt Stephens sought to introduce at trial was relevant in establishing defendant's motive and intent to discriminate.

Ivey's discriminatory acts, together with Campbell's and Judge Hill's conduct against Emmitt Stephens, were acts that were constitutionally relevant to Emmitt Stephens' claims in this 42 U.S.C. §§1981 and 1982 litigation brought in a state court.

CONCLUSION

At the beginning of the trial and during the trial, Emmitt Stephens' behavior and demeanor resembled more of the slave background of his foreparents than that of his free person status which had allowed him to bring this action against Ivey. The behavior of Bill Campbell and its sanctioning by Judge Hill had reduced Stephens into such mental submission and state of fear that on cross examination by Bill Campbell, Stephens stated that he could not be sure of the race of the all white tenants in the shopping center, all of which he knew by name. Embarrassing almost beyond willingness to admit, the record reflects Millard Farmer had such fear for an additional contempt charge that his skill of advocacy was diminished, as in shown by his effort to

have Judge Hill clearly state his ruling at T-14-15. During an attempt by Farmer to have an understanding of Judge Hill's ruling, Judge Hill threatened him with another contempt. (T-15).

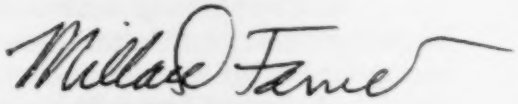
The jury returned a verdict for Harold Ivey and Bonny Associates. After the jury returned a verdict, Judge Hill told each of the jurors he would like their names and addresses for his personal use. (R-1482). This was a fitting end of a proceeding that had been entirely for the personal use of Judge Hill and Bill Campbell.

By Ivey employing Campbell, defendants purchased a witness, in Campbell, who was uncrossexaminable, a lawyer that could eliminate Stephens receiving a fair share of judicial discretion, a lawyer who could racialize the jury to prevent Stephens from having his fair share of African American persons on the jury, a lawyer who could psychologically damage Stephens to the extent that he was unable to present his side of the case fairly and a person who was willing to sell his reputation by putting a "Good Housekeeping" seal of approval on Ivey's racism and discrimination toward Emmitt Stephens.

If Ivey is constitutionally entitled to purchase Bill Campbell and the City of Atlanta's good will that Campbell brought to the case with him, Stephens is constitutionally entitled to make these facts known to the trier of facts.

This Court should grant the petition for writ of certiorari.

Respectfully submitted,



Millard Farmer
Counsel of Record
P.O. Box 1728
Atlanta, GA 30301
(404) 688-8116

February 22, 1994

In the Court of Appeals of Georgia

A93A2608 STEPHENS v. IVEY et al. (Bea-171)
BEASLEY, Presiding Judge.

Plaintiff Stephens appeals from a judgment entered on a jury verdict in favor of defendants in an action for damages resulting form alleged civil rights violations. This litigation has been ongoing since July 1990. The gravamen of the complaint is that Stephens, an African-American, was wrongfully denied the right to rent space to operate an entertainment facility in defendants' shopping center because of his race. Additional facts will be developed when necessary to the disposition.

1. In enumeration of error 2, Stephens challenges the constitutionality of OCGA §5-6-34 and USCR 25 as violative of the federal and Georgia constitutions. This appeal was originally filed in the Supreme Court, which on its own motion transferred it to this court. "The transfer of the case by the Supreme Court to this court is a final determination that no constitutional question was in fact properly raised or, if so raised, that it was not meritorious." Krause v. Vance, 207 Ga. App. 615, 622 (19) (428 SE2d 595) (1993).

2. In his first enumeration of error, Stephens contends that the court erred in denying three recusal motions "because the judge failed to recuse himself, failed to refer the motion to another judge, failed to grant the motion for disqualification, and failed to grant a certificate of immediate review."

Argument or authority are offered only with respect to the final motion to disqualify which was brought after Stephens and his attorney, Millard Farmer, had been held in contempt of court by the trial judge. The appeal from that contempt citation is also before this court. In re Farmer et al. (Case No. A93A1776, decided February 22, 1994). Any assertion of error

as to the first two motions to disqualify are abandoned under Court of Appeals Rule 15 (c)(2).

The trial judge's duty in ruling on a motion to recuse "'will be limited to passing upon the legal sufficiency of the [accompanying] affidavit, and if, assuming all the facts alleged in the affidavit to be true, recusal would be warranted, then another judge must be assigned to hear to the motion.' [Cit.] . . . . . However, '[a]ny alleged prejudice or bias against the party's attorney rather than the party himself is not, per se, grounds for disqualification . . . . .' [Cit.]" Houston v. Cavanagh, 199 Ga. App. 387, 388 (405 SE2d 105) (1991).

USCR 25.2 requires that the affidavit "state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons and circumstances of extra-judicial conduct or statements . . . which would influence the judge and impede or prevent impartiality in that action. Allegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion or warrant further proceedings." (Emphasis supplied.)

The trial court determined that several of the proffered grounds were untimely under USCR 25.3 and would not be considered. Since that portion of the ruling is unchallenged, it does not require our consideration With respect to the remaining grounds, the court concluded that the "affidavit fails to clearly state facts and reasons sufficient to warrant and support a belief that a bias or prejudice exists." It found the affidavit in support of the recusal motion to be thus legally insufficient.

The motion asserts a variety of allegations, much of which consist of ad hominem attacks on attorney William Campbell, then a city councilman, and other opposing counsel. They are not grounds for recusal of the judge. As to those which are directed at the court, very little in the way of factual material is stated. Isolating fact from "conclusions and suspicions" and mere dissatisfaction with the court's rulings, what is left are allegations that the court engaged in an ex parte conversation with defendants' counsel. This was explained under oath by Mr. Campbell as entering chambers to inquire if a hearing was to be held that morning since he found the courtroom empty; no further discussion ensued. It is alleged

that the court on a variety of occasions "knowingly made untruthful statements." The purportedly false statements are neither identified nor are they supported by a factual basis.

Stephens' assertion that Houston, supra, mandates recusal is without merit. That decision was limited to the "extremely rare [situation] . . . in which the judge who found the attorney in contempt in the underlying case is to hear [a] § 9-15-14 claim against the same attorney who now stands as a defendant in the § 9-15-14 claim, the affidavit in support of recusal was [held to be] legally sufficient." Id. at 389.

"To warrant disqualification of a trial judge the affidavit supporting the recusal motion 'must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment.' [Cits.]" Jones v. State, 247 Ga. 268, 271 (4)(275 SE2d 67) (1981). Stephens has not established a legally sufficient affidavit so as to require a recusal hearing before another judge. Id.; USCR 25.3

Any complaint concerning failure to grant a certificate of review is abandoned under Court of Appeals Rule 15 (c)(2).

3. The third enumeration of error involves an alleged Batson/Edmonson violation.

Stephens asserted a timely Batson challenge. See Calhoun v. Purvis, 206 Ga. App. 565 (2) (425 SE2d 901) (1992). Counsel argued that defendants exercised four of their six peremptory strikes against African-American individuals. Stephens also objected to the exercise of three strikes in a racially discriminatory manner with respect to the alternates; the court agreed and granted relief. The challenge is now directed only to the panel of twelve.

Assuming the establishment of a prima facie case of discrimination, the proffered explanation determines whether racially neutral criteria were given for the strikes. Strozier v. Clark, 206 Ga. App. 85 (3) (424 SE2d 368) (1992).

Defendants explained that the first juror was stricken because she knew of Mr. Farmer, she had been a plaintiff in a lawsuit, and counsel did not like her responses concerning a business she had operated. The second juror was stricken because he did not show the business acumen counsel believed necessary to an understanding of the case. He was not knowledgeable about basic business matters, e.g., a landlord

requiring a security deposit. The third juror was stricken because she demonstrated a lack of loyalty to her employer and counsel "didn't like that as a trait in a juror." The fourth juror was stricken because he had "literally the exact same occupation as Mr. Stephens," and counsel thought he might be "overly sympathetic." The court granted the Batson motion with respect to the third juror and placed her on the jury. The three remaining strikes were upheld on the ground that defendants had established racially neutral reasons for their exercise. Defendants' explanation for the three remaining strikes "sufficiently showed 'that discriminatory purpose was not involved." Gamble v. State, 257 Ga. 325, 326 (5) (357 SE2d 792) (1987).

Although Stephens further contends that the court failed to make proper findings as to "whether the defense had successfully rebutted the prima facie showing of discrimination, " he did not assert this complaint below and invoked no ruling from the court. Such a finding is implicit in overruling the Batson objection. Harmful error has not been shown.

4. Stephens contends that the court abused its discretion in refusing to disqualify William Campbell as counsel for defendants when it was shown that Campbell (1) commented to plaintiff Stephens while the two were waiting for an elevator, "why would you hire this plantation mentality lawyer when there are plenty of black lawyers you could have hired;" (2) had an ex parte conversation with the court (described in Division 2 above); (3) used "verbal assaults" upon opposing counsel; (4) made false statements to the court; and (5) improperly conducted himself as a public official. He contends that these acts violated ethical guidelines and Stephens' rights to due process and equal protection under the federal and Georgia constitutions.

"[T]he right to counsel is an important interest which requires that any curtailment of the client's right to counsel of choice be approached with great caution." Blumenfeld v. Borenstein, 244? Ga. 406, 408 (276 SE2d 607) (1981). "[I]n the absence of contrary evidence, it will be presumed that members of our State Bar have properly complied with the Bar's ethical directory and disciplinary rules." Gene Thompson Lumber v. Davis Parmer Lumber, 189 Ga. App. 573, 575 (1)

(377 SE2d 15) (1988). Stephens has not established a sufficient factual basis for his allegations or that denial of his motion to disqualify constituted an abuse of the court's sound discretion. Id. He has failed, moreover, to demonstrate how the ruling deprived him of due process or equal protection under the law.

5. Stephens challenges an evidentiary ruling of the court disallowing on relevancy grounds matters which have occurred in this litigation since the time the lease was refused. He specifically sought to introduce evidence of "discrimination" displayed against him during discovery depositions in the litigation, and "discrimination . . . with reference to the employment . . . of Mr. Campbell in the case." The court sustained defendants' objection on grounds that the evidence is "irrelevant, immaterial and highly prejudicial;" it ruled that the only relevant inquiry is whether Stephens was wrongfully denied a lease based on his race. The trial court did not abuse its discretion in disallowing the evidence on relevancy grounds. See Parker v. Clickener, 193 Ga. App. 321, 325 (2) (387 SE2d 587) (1989).

Judgment affirmed. Cooper and Smith, JJ., concur.

SUPREME COURT OF GEORGIA

April 29, 1994

EMMITT H. STEPHENS V. HAROLD W. IVEY ET AL.

Upon consideration of Emmitt H. Stephens, Jr.'s petition for the writ of certiorari, it is hereby ordered that the petition be denied.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

EMMITT H. STEPHENS, JR.,
Plaintiff

v.

HAROLD W. IVEY and BONNY ASSOCIATES, A General Partnership of the State of Georgia and County of Fulton,
Defendants

Civil Action
No. D-80845

ORDER ON DEFENDANTS' MOTION FOR SANCTIONS

This matter is before the court on this date on Defendants' Motion for Sanctions and Plaintiff's response thereto. The subject motion was filed in response to Plaintiff's "Motion to Disqualify William "Bill" "Judeas" [sic] Campbell as attorney for Harold W. Ivey and Bonny Associates, together with a request for other relief," which was filed on June 1, 1992.

TIMELINESS

Plaintiff contends that Defendants' motion is premature as O.C.G.A. §9-15-14(b) and (e) authorize the same via motion only within forty-five days after final disposition of the action. Defendants contend that the language of subsection (e) is permissive as opposed to mandatory.

The court is of the opinion that because subsection (b) affords the court authority, without the benefit of motion from the parties, to itself assess reasonable and necessary attorney's fees and expenses of litigation when the requisite conduct is demonstrated, the forty-five day requirement of subsection (e), which specifically finds application when relief is requested by motion of the parties, in inapplicable. However, in order to work a speedy and fair disposition of Plaintiff's cause of action, the court will not rule sua sponte nor will the court rule at present on Defendant's Motion for Sanctions.

A ruling on Defendants' Motion for Sanctions is withheld until forty-six days following final disposition of this action. The court cannot help but note that but for Plaintiff's

action in filing his motion to reopen discovery, this matter would have proceeded to trial as originally scheduled.

PLEADINGS

On its own initiative, however, the court pursuant to the authority of O.C.G.A. §9-11-12(f) orders stricken from all filed pleadings any and all references to "William 'Bill' 'Judeas' [sic] Campbell." All references to counsel, the parties and any witnesses shall be by their proper names.

The responsibility and burden is upon counsel for Plaintiff to file amended versions of all affected pleadings within thirty days from today's date.

This matter is to be placed upon the next available trial calendar.

SO ORDERED, this 8th day of September, 1992.

WILLIAM B. HILL JR.,
JUDGE, SUPERIOR COURT
OF FULTON COUNTY
ATLANTA JUDICIAL
CIRCUIT

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

EMMITT H. STEPHENS, JR.,
Plaintiff,

v. No. D-80845

HAROLD W. IVEY and
BONNY ASSOCIATES, A General
Partnership of the State of
Georgia and County of Fulton,
Defendants

COMPLIANCE WITH ORDER TO DELETE
THE WORDS "BILL" AND "JUDAS" BETWEEN
WILLIAM CAMPBELL'S FIRST AND LAST NAMES

Emmitt Stephens, through his counsel, Millard Farmer, files this compliance to the September 8, 1992 Order of Judge William B. Hill.

The order directed

> . . . stricken from all filed pleadings any and all references to 'William 'Bill' 'Judeas' [sic] Campbell.' All references to counsel, the parties and any witnesses shall be by their proper names.
>
> The responsibility and burden is upon counsel for plaintiff to file amended versions of all affected pleadings within thirty days from today's date.

Emmitt Stephens, through counsel, Millard Farmer, does amend all previous references to William "Bill" "Judas" Campbell by deleting the "Bill" and "Judas" from the pleading. In order that the pleading will not lose the impact and desired results, counsel adds after the proper name of William Campbell at each time the deletions occur, a descriptive phrase which expresses the connotation intended by the usage of the term "Judas." The inserted phrase accomplishes the same legal purpose intended by the deleted designations.

Added Phrase

William C. Campbell, a person who is betraying the cause and constitutional quest of racial equality by jumping into this case just before trial to represent Harold Ivey and Bonny Associates,

The court-ordered changed pleadings are attached.

Respectfully submitted,

Millard Farmer
P.O. Box 1728
Atlanta, GA 30301
(404) 688-8116

COUNSEL FOR
EMMMITT H. STEPHENS, JR.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

EMMITT H. STEPHENS, JR.,
Plaintiff,

v. No. D-80845

HAROLD W. IVEY and
BONNY ASSOCIATES, A General Partnership of the State of Georgia and County of Fulton,
Defendants.

COURT ORDERED CHANGE

Each time there is a deletion between "William" and "Campbell," the following phrase is inserted after the name, "William C. Campbell":
"A person who is betraying the cause and constitutional quest of racial equality by jumping into this case just before trial to represent Harold Ivey and Bonny Associates."

MOTION TO DISQUALIFY WILLIAM CAMPBELL AS ATTORNEY FOR HAROLD W. IVEYAND BONNY ASSOCIATES, TOGETHER WITH A REQUEST FOR OTHER RELIEF

Introduction

This is a case about the racial discrimination of Harold Ivey and Bonny Associates.

William Campbell's name was inserted on the pretrial order as an additional counsel on this last Friday afternoon May the 29th after 5:00 p.m., only a few days before

this case is scheduled to begin trial. At this time, a number of names were also inserted as new witnesses for Harold Ivey and Bonny Associates. These witnesses have financial and political interests with the City of Atlanta; two of these witnesses being Herman J. Russell and Leroy Johnson. Ira Jackson, a witness of Harold Ivey was removed from the list. He is presently under investigation for fraud and political corruption.

There is a conflict of interest in William Campbell representing Bonny Associates and Harold Ivey in this case.

William Campbell is a member of the City Council of the City of Atlanta. The City of Atlanta has financially benefitted a number of witnesses that Harold Ivey has maintained will testify on his behalf in this case.

William ampbell has influence and accepted financial benefits from Harold Ivey and Bonny Associates to influence the availability and testimony of these witnesses who have financial and political ties with the City of Atlanta and its governing people.

Statement of This Civil Rights Action
Against Harold Ivey and Bonny Associates

* * * *

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

EMMITT H. STEPHENS, JR.,

Plaintiff,

v. No. D-80845

HAROLD W. IVEY and BONNY ASSOCIATES, A General Partnership of the State of Georgia and County of Fulton,

Defendants

MOTION THREE TO DISQUALIFY WILLIAM B. HILL AS JUDGE AND CONSTITUTIONAL CHALLENGE TO THE LIMITED AND DELAYED REVIEW ON A JUDGE'S DISQUALIFICATION

Emmitt Stephens and Millard Farmer move for the third time to disqualify William B. Hill as judge in this case.

In this motion Emmitt Stephens and Millard Farmer move not only to disqualify William B. Hill as judge, but additionally move to challenge the constitutionality of Uniform Superior Court Rule 25, which sets out the procedure for a judge's disqualification and O.C.G.A. §5-6-34(b),(c) and (a), which delays an appeal of the judge's decision on disqualification unless the judge who is the subject of the disqualification motion grants a certificate of immediate review.

Motion Three To Disqualify
William B. Hill Is Timely

This motion three to disqualify William B. Hill is timely for the reason set out in this motion, but specifically because:

(a) within the last five days in a hearing on Monday, March 1, William "Bill" Campbell, counsel for Harold Ivey and Bonny Associates, admitted for the first time he had an ex parte conversation with either William B. Hill and/or his law clerk before the June 1, 1992 hearing on the motion to disqualify a local politician, William "Bill" Campbell as counsel for Harold Ivey and Bonny Associates. This admission is relevant for the act of the ex parte conversation and the acts of William B. Hill in feigning the non-existence of this ex parte conversation;

(b) within the last five days, William B. Hill has held Emmitt Stephens, plaintiff in this action, in willful contempt of court for conduct that he did not commit and conduct that was not supported by even a scintilla of evidence. This contempt action by William B. Hill against Emmitt Stephens was for the purpose of harassing, embarrassing and intimidating this litigant who has been abusively treated continually in this litigation.

(c) within the last five days, William "Bill" Campbell, counsel for Harold Ivey and Bonny Associates, has admitted under oath that he gave in part a false affidavit to support the motion for sanctions against Millard Farmer. William B. Hill tacitly sanctioned this conduct by ignoring it and failing or refusing to rule upon requested relief from a pattern of false statements and verbal abuses by William "Bill" Campbell.

(d) within the last five days, after a hearing on a motion to strike portions of a motion denied by the court on June 1, 1992, William B. Hill held Millard Farmer in contempt of court by knowingly making untruthful statements in a finding of fact. The knowingly untruthful statements and the contempt of court were by William B. Hill for the purpose of personal and professional ridicule of Millard Farmer and for other unethical reasons set forth in this motion, and as will be shown by evidence presented at a hearing.

(e) within the last five days, William B. Hill has intentionally and knowingly used the Fulton County Daily

Report, the official legal organ of Fulton County and part of the public media for the purpose of personal and professional ridicule of Millard Farmer and for unethical reasons set forth in this motion, and as will be shown by evidence presented at a hearing.

(f) within the last five days, William B. Hill has prevented counsel for Emmitt Stephens from obtaining a statement from his calendar clerk, Null Knight, that supports the fact that William B. Hill is purposefully and intentionally preventing the case of Emmitt Stephens from being placed on the trial calendar, and has continually made materially false statements about reasons for delay in the trial of this case.

(g) within the last five days, William B. Hill has been presented uncontested evidence that William "Bill" Campbell made numerous false statements to the court on the day of the hearing on the motion to disqualify William "Bill" Campbell. The judge, William B. Hill, has not acted on this conduct of unethical proportion, while sua sponte acted against Emmitt Stephens and Millard Farmer; this is but a small part of the unequitable treatment that is part of the personal bias of William B. Hill against Millard Farmer.

(h) within the last five days, William B. Hill has failed and refused to rule upon or disqualify William "Bill" Campbell for his unethical, illegal and unconstitutional conduct in the representation of Harold Ivey and Bonny Associates, which includes among many reasons, his conflict of interest in being an elected official and listing witnesses who contract with the City of Atlanta, the governmental entity which William "Bill" Campbell is elected to serve.

(i) within the last five days, William B. Hill has continued and exacerbated his personal vendetta against Millard Farmer.

(j) within the last five days, William B. Hill has made knowingly false statements in the record of this case for the purpose of prejudicing the rights of Emmitt Stephens and his counsel, Millard Farmer;

(k) within the last five days, William B. Hill has continued and exacerbated the conduct that has been the subject of disqualification motions one and two; and,

(l) within the last five days there has been documented proof that William B. Hill is unqualified to act judiciously in this matter in which Emmitt Stephens, through his

counsel, Millard Farmer, seeks redress for unconstitutional, racial discrimination by Harold Ivey and Bonny Associates.

(m) within the last five days, William B. Hill has continued a pattern he established as a lawyer for the State of Georgia Attorney General, i.e., that is a pattern of taking actions that support and allow to go unchecked acts of racial discrimination if by taking such actions or failing to take such actions, it personally benefits William B. Hill. This judge has sacrificed the constitutional rights of Emmitt Stephens and Millard Farmer for personal gain to himself. The acts of William B. Hill in this case violate his oath of office.

(n) within the last five days, William B. Hill has demonstrated that he has engaged in a pattern of feigning impartiality while only awaiting an opportunity to enact his personal bias and prejudice against Millard Farmer.

All of the above specification of reasons for disqualification of William B. Hill as judge are included to show both the timeliness of this motion and some of the grounds for disqualification.

Challenge To Unconstitutionality Of
Uniform Superior Court Rule 25 And
O.C.G.A.§5-6-34(b), §5-6-34(a) And §5-6-34(c)[1]

This challenge to the constitutionality of Uniform Superior Court Rule 25[2] and O.C.G.A. §5-6-34(b), §5-6-34(a)and §5-6-34(c)[3] is now necessary because there have been two previous motions to disqualify William B. Hill and on each occasion, he has refused to assign either motion to another judge for review or grant the certificate of immediate review necessary for an appeal.

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[1] Because this motion is an attack upon the constitutionality of a statute, a copy of this motion is served upon the Attorney General of Georgia as required by statute.

[2] The text of Uniform Superior Court Rule 25 is Attachment 23.

[3] The text of O.C.G.A. §5-6-34(a), (b) and (c) is Attachment 24.

This case, this judge and the hostility that exists between this judge, William B. Hill and Millard Farmer demonstrates more than any imaginable situation the void that exists in the Uniform Superior Court Rules and the statutes for correction of unacceptable judicial behavior. To pass constitutional muster, once a right of review is allowed by a state, the review must comport with due process. No litigant nor his counsel should be required to appear before a judge who is exercising a personal vendetta against a person without an opportunity to timely have the conduct reviewed. The court system will lose public acceptability if a judge is allowed to use this institution for personal vindictiveness and character assassination without there being a timely opportunity for relief by those being victimized.

William B. Hill's conduct in this case violates both the Due Process and Equal Protection Clauses of the Fourteenth Amendment as well as the freedom of speech provision of The First Amendment. The Fourteenth Amendment to the United States Constitution provides in part that:

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

United States Constitution, Amendment XIV.

Similar rights are guaranteed under the Georgia Constitution. Ga. Coast. 1983, Art. I, Sect. I, Para VII. State statutes and rules which deny due process and equal protection of the law are unconstitutional. The test of due process looks to the totality of circumstances, and particularly, as concerns judicial proceedings, due process entails not merely having one's case heard by an impartial tribunal in the first instance, but having the process of decision be impartial in every instance and in every respect. Wall v. American Optometric Ass'n, 379 F.Supp. 175 (N.D. Ga.), aff'd., 419 U.S. 888 (1974). Clearly that standard is violated by the operation of Uniform Superior Court Rule 25.

In delineating the procedure to be utilized in disqualifying a judge or offering the judge an opportunity for recusal, Rule 25 clearly places initial scrutiny, and if the judge desires, final scrutiny, of the motion in the hands of the very

judge sought to be removed. It is the challenged judge who must first rule upon the timeliness of the motion and the legal sufficiency of the affidavit underlying the motion. Isaacs v. State, 257 Ga. 126, 355 S.E.2d 644 (1987), cert denied, 110 S.Ct. 3297 (1990). If the judge against whom the motion is directed is being challenged, as in this case, on the grounds of bias and prejudice, it is highly improbable that a corrupt or immoral judge can be impartial and objective in passing on the legal sufficiency of the motion seeking his or her removal. Thus the dictates of the due process clause are not being met and what results is an arbitrary decision making process not subject to review. The more biased and prejudiced the judge under the present system, the more unlikely the chance for the disqualification scheme to operate constitutionally.

Pursuant to Rule 25, should the challenged judge determine that the motion to recuse or disqualify is either untimely or legally insufficient, that judge is not obligated to transfer the matter to another independent judge for hearing the motion. The motion dies at the hands of the challenged judge. Penny v. State, 157 Ga. App. 737, 278 S.E.2d 460 (1981). Nor is this decision subject to timely appellate review because that, too, can be blocked by the challenged, biased and prejudiced judge. Both of these acts have twice occurred in this case.

O.C.G.A. §5-6-34(b) requires that all notices of appeal to any matters not specifically outlined in O.C.G.A. §5-6-34(a) and (c) must be accompanied by a certificate of immediate review signed by the trial judge. Scruggs v. Ga. Dept. of Human Resources, 261 Ga. 587, 408 S.E.2d 103 (1991). An appeal from a denial of a motion to disqualify a trial judge is not enumerated in O.C.G.A. §5-6-34(a) or (c).Accordingly, it is the challenged, biased and prejudiced judge who must then sign the certificate of removal. In this case, William B. Hill twice denied the motions to disqualify, refused to pass the matter to an independent judge and refused to sign, in both instances, certificates of immediate review. Now he has held both Emmitt Stephens, the plaintiff, and his counsel in contempt of court as an indication, expression and result of his bias and prejudice. Surely the drafters and interpreters of our Constitution did not envision such a preposterous outcome.

Whether due process requires a particular procedure in any given situation must be determined by balancing an individual's interest in avoiding the loss that a lack of procedure

will inflict versus the interests the government seeks to protect in denying that procedure. To require Emmitt Stephens to present this case before an obviously biased judge while continually suffering racial discrimination both out of court and in the judicial proceedings, only to have it reversed on appeal was clearly not the intent of either Rule 25 or O.C.G.A. §§5-6-34(b),(a) or (c). While it is recognized that the Fourteenth Amendment to the Constitution in requiring due process, does not contemplate the right to appeal and that where the appeal is given, the State may prescribe the procedure, Alexander v. Blackmon, 129 Ga. App. 214, 216, 199 S.E.2d 376 (1973), once that procedure is established, it must operate equally as to all persons and not subject an individual to the arbitrary exercise of power. Cf. Chatterton v. Dutton, 223 Ga. 243, 154 S.E.2d 213, cert. denied, 389 U.S. 914 (1967). The operation of both Rule 25 and O.C.G.A. §5-6-34(b)(a) and (c) are arbitrary as applied to Emmitt Stephens and violative of both the due process and equal protection clauses of the Fourteenth Amendment.

The first motion to disqualify William B. Hill as judge in this case, together with the appendix, is attachment 2.

The second and continuing motion to disqualify William B. Hill as judge in this case, together with the exhibits, is attachment 4.

The order denying the hearing and first motion to disqualify William B. Hill is attachment 3.

The order denying the hearing and second continuing motion to disqualify William B. Hill is attachment 5.

Millard Farmer Has A First
Amendment Right To Disagree With
William "Bill" Campbell And William B. Hill

William B. Hill, in order to deprive Millard Farmer and Emmitt Stephens of their First Amendment rights, has failed to disqualify himself and has threatened sanctions and actually held Millard Farmer and Emmitt Stephens in contempt for expressing views which could and should be litigated. The actions of Millard Farmer and Emmitt Stephens constituted protected speech under the First Amendment and William B. Hill has done everything in his power to deprive them of those rights.

Statements made in the presence of the court and outside the presence of the court are protected by the guarantee of freedom of speech of the First and Fourteenth Amendments to the United States Constitution and by the Georgia Constitution

(Art. I, Sec. I, Par. V). Garland v. State, 253 Ga. 789, 790, 325 S.E.2d 131 (1985). Contemptuous statements, i.e., those creating a clear and present danger to the orderly administration of justice, are the only statements not so protected. Id. The danger must be absolute. Neither an "inherent tendency" nor "reasonable tendency" is enough. Id., citing Bridges v. California, 314 U.S. 252, 272 (1941). Identification of a statement as contemptuous can only be made after taking into account the setting in which the statement was made. Garland v. State, Id. at 791.

William B. Hill found statements contained in the initial Motion to Disqualify William "Bill" "Judas" Campbell as "derogatory" and ordered those statements stricken from the record. He made this determination after the motion had been heard and ruled upon and was thus moot. Even though the motion was moot, he held a subsequent hearing on whether sanctions should be imposed for use of this "derogatory" language, and when a redacted motion was filed, held yet another hearing on Defendants' motion to strike certain language in the redacted, moot motion.

Incredulously, William B. Hill then held Millard Farmer and Emmitt Stephens in contempt for the insertion of certain language in the redacted, moot motion. Any language or characterizations contained in moot documents, or any conduct related thereto, did not, most emphatically, present a clear and present danger to the orderly administration of justice.

William B. Hill's true intent in holding Millard Farmer and Emmitt Stephens in contempt was to place a chilling effect upon their criticism of William "Bill" Campbell as a person who is betraying the cause and constitutional quest for racial equality; and their criticisms of William B. Hill for failing to disqualify himself and failing to allow a full and fair presentation of the evidence if such evidence hurts William "Bill" Campbell. Clearly, such conduct on the part of William B. Hill is violative of the dictates of the First Amendment. Moreover, the fact that the arbitrary application of Uniform Superior Court Rule 25, combined with the operation of O.C.G.A. §5-6-34 prevents an immediate review of these First Amendment violations by William B. Hill is in itself a First Amendment violation.

Attachments

In support of this motion three to disqualify William B. Hill, there are numerous attachments incorporated and made a part of this motion. The attachments that are the pleadings of Emmitt Stephens, the plaintiff, and the statements of Emmitt Stephens and Millard Farmer contained in the pleadings and transcripts of proceedings, are included for both historical purposes and for the truthfulness of the statements as known to Emmitt Stephens and Millard Farmer at the time of the statements. The statements of Emmitt Stephens and Millard Farmer contained in these attachments are true and correct to the best of their knowledge and belief at this time unless they have been corrected or explained subsequent to the original statement, with these corrections appearing in this motion with the attachments. Without rewriting each of these pleadings and statements in this motion, they are incorporated and made a part of the motion as fully as if each fact contained therein was fully set forth in this motion. The attachments are included also because the pattern of William B. Hill's past behavior would indicate that Emmitt Stephens will have to seek relief from sources other than the Superior Court of Fulton County for the discriminatory acts of Harold Ivey and Bonny Associates in the first instance, and later counsel for these defendants, together with relief from the bias and prejudice of William B. Hill.

These attachments are as follows:

1. Civil Rights Complaint
2. Motion To Disqualify William B. Hill As Judge In This Case
3. Order On Plaintiff's Motion To Recuse [sic][4]
4. Second and Continuing Motion to Disqualify William B. Hill As Judge In This Case
5. Order on Plaintiff's Second Motion To Recuse
6. Response to the Antebellum Branch of Jones & Day's "Motion To Compel Discovery And For Protective Order"

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[4] The word, "recuse" is used when the judge alone removes himself or herself from a case; the word, "disqualification" is the proper designation when the removal is based upon action of another person.

7. Supplementary Response To The Antebellum Branch of Jones, Day's Motion To Compel Discovery And For Protective Order: The antebellum branch of Jones, Day acts as a hypocrite.
8. Order of Judge Edward H. Johnson Denying Defendants' Motion To Compel and Granting Attorney's Fees To Plaintiff.
9. Notice of Substitution of Counsel [Jones, Day Withdraws; William H. Major enters appearance]
10. Motion To Disqualify William "Bill" "Judas" Campbell As Attorney For Harold W. Ivey And Bonny Associates, Together With A Request For Other Relief
11. Entry of Appearance of Bill Campbell [No Certificate of Service; not served on counsel for Plaintiff]
12. Transcript of June 1, 1992 Proceedings Before William B. Hill
13. Defendants' Motion For Sanctions, Including Litigation Costs And Attorneys' Fees
14. Plaintiff's Response To Defendants' Motion for Sanctions
15. Order On Defendants' Motion For Sanctions [This Order includes the Order to Redact "Judas" from the disqualification motion.]
16. Redacted Motion To Disqualify William C. Campbell
17. Motion to Strike
18. The One Hundred Million Dollar Net Worth Of Harold Ivey And Bonny Associates Has Corrupted The Professional Conduct Of William "Bill" Major And William "Bill" Campbell
19. Order On Defendants' Motion To Strike And The Court's Sua Sponte Inquiry Regarding Contempt
20. Fulton Daily Report Article dated October 20, 1992
21. Fulton Daily Report Article dated March 5, 1993
22. Order and Opinion of U.S. District Court for the Northern District of Texas Granting Preliminary Injunction in Millard Farmer, et al. v. Randall Sherrod, et al., Case No. 2:93-CV-0017-J, March 4, 1993.
23. Text of Uniform Superior Court Rule 25
24. Text of O.C.G.A. §5-6-34(a), (b) and (c)
25. Transcript of September 8, 1992 Proceedings Before William B. Hill [to be added by amendment when completed by the court reporter]

26. Transcript of March 1, 1992 Proceedings Before William B. Hill [To be added by amendment when completed by the court reporter].

William B. Hill Has Sua Sponte Held Emmitt Stephens And Millard Farmer In Willful Contempt Of Court For Conduct That Violated No Order Or Proper Decorum Of The Court While Ignoring And Sanctioning Numerous False Statements, A False Swearing And A Barrage Of Other Unethical Conduct By William "Bill" Campbell, A Local City Council Person And Counsel For Harold Ivey and Bonny Associates.

A sampling of some of the conduct of William "Bill" Campbell that the court has knowingly permitted, allowed and at times, even encouraged by its rulings and limitation on presentation of evidence are as follows. Since William "Bill" Campbell's entry into this case on behalf of Harold Ivey and Bonny Associates, there has not been even a single act of discouragement to William Campbell for his conduct.

William "Bill" Campbell knowingly made false statements to the Court about his fee arrangement with Harold Ivey and Bonny Associates, or he perjured himself in his affidavit in support of the Motion for Sanctions. The fee arrangement was thought to be relevant to the issue pending before the court at the time it was made:

WILLIAM "BILL" CAMPBELL TO THE COURT ON JUNE 1, 1992 [T.25, l.18]:

"Let me state that there has not been a single discussion with Mr. Ivey regarding fees to be paid to me in this case."

AFFIDAVIT OF WILLIAM "BILL" CAMPBELL ON JUNE 30, 1992 IN SUPPORT OF MOTION FOR SANCTIONS:

"7. I told Mr. Ivey [on May 29, 1992] that in the event I elected to become associated with Mr. Major in the trial of the case, I would do so on my regular hourly rate."

AFFIDAVIT OF WILLIAM "BILL" MAJOR ON JUNE 30, 1992 IN SUPPORT OF MOTION FOR SANCTIONS:

"9. On Friday morning, May 29, 1992, Mr. Campbell met with me and Harold Ivey and Mr. Calvin Tatum of Bonny Associates, at Mr. Ivey's residence. We discussed the case in some detail and Mr. Campbell advised that in the event that he elected to go forward as counsel in the case, he would do so on the basis of charging his regular hourly rates."

WILLIAM "BILL" CAMPBELL SWORE IN HIS AFFIDAVIT IN SUPPORT OF MOTION FOR SANCTIONS DATED SEPTEMBER 4, 1992:

"6. . . . I went to the courtroom of Judge Hill at 9:00 a.m. and remained there until the conclusion of the hearing on Plaintiff's Motion.

WILLIAM "BILL" MAJOR SWORE IN HIS AFFIDAVIT IN SUPPORT OF MOTION FOR SANCTIONS DATED SEPTEMBER 4, 1992:

"4. When I arrived in my office at approximately 9:00 o'clock on the morning of June 1, 1992, I found that on the previous evening, Sunday, May 31, 1992, at 8:05 p.m., Millard Farmer, counsel for plaintiff, had transmitted to my office by telefax a motion entitled 'Motion to Disqualify William 'Bill' 'Judas' Campbell as Attorney for Harold W. Ivey and Bonny Associates, Together With a Request for Other Relief.'

5. The motion indicated that a hearing would be sought early on the morning of Monday, June 1, 1992. I immediately attempted to contact Mr. Campbell to see if he was aware of the motion and proceeded to the courthouse.

6. When I arrived at the courthouse, I found the courthouse to be without lights and there was some delay in being admitted to the courthouse building. Eventually, a hearing was held by the judge in the captioned matter; the motion filed by Mr. Farmer was denied; and the Court directed counsel for defendants to prepare a

Motion for Sanctions with respect to plaintiff's motion."

The truth was that William "Bill" Campbell was outside the courthouse yelling derogatory remarks to Millard Farmer after 9:00 a.m. In fact, he even made a statement after 9:00 a.m. and before the hearing to WSB TV about the electrical outage at the courthouse. William "Bill" Major was with William "Bill" Campbell outside the courthouse after 9:00 a.m. on June 1, 1992, and at one point, had to pull William "Bill" Campbell away from Emmitt Stephens and Millard Farmer. William "Bill" Major knew the affidavit was false and suborned the false statement.

At the March 1, 1993 hearing under cross examination, William Campbell admitted the affidavit was false.

WILLIAM "BILL" CAMPBELL SWORE IN HIS AFFIDAVIT IN SUPPORT OF MOTION FOR SANCTIONS DATED SEPTEMBER 4, 1992:

"7. . . . I researched the issue of sanctions and edited both the Brief and the Affidavit that were submitted in connection with the Motion for Sanctions.

THE CASE WILLIAM "BILL" CAMPBELL THOUGHT ONLY HE AND THE JUDGE KNEW ABOUT:

Adams v. Moffatt, et al., 204 Ga. App. 314, 419 S.E. 2d 318 (1992) clearly stated the Motion for Sanctions was filed prematurely.

Emmitt Stephens has given a sworn affidavit which is incorporated and made a part of Attachment 18 as Appendix 6. In part, this affidavit details more unethical conduct of William "Bill" Campbell.

"2. On June 1, 1992, I went to the Fulton County Courthouse with my

attorneys. We went to the courthouse for a motion hearing and because my case was set on the trial calendar that began on June 1.

3. Because the power was out in the courthouse, we had to wait outside the courthouse. A crowd of more than one hundred persons had gathered waiting to be allowed into the courthouse. In full view of this large crowd at the courthouse, William Campbell angrily approached my attorney, Millard Farmer. Mr. Campbell got within inches of Mr. Farmer's face, pointed his finger in Mr. Farmer's face and angrily shouted at Mr. Farmer.

4. Mr. Campbell called Mr. Farmer a "redneck," a "white redneck," a "racist," a "plantation mentality white racist," a "coward," a "redneck plantation mentality white racist," and numerous other derogatory names. All of these statements were made by Mr. Campbell in a loud and angry voice. Mr. Campbell continued to shout at Mr. Farmer in the presence of the crowd gathered at the courthouse for several minutes.

5. I was extremely offended by Mr. Campbell's behavior and also very intimidated because I knew that Mr. Campbell is a member of Atlanta government.

6. At the hearing in Judge Hill's courtroom on June 1, 1992, I heard Mr. Campbell, in open court, again call Mr. Farmer a racist and a plantation mentality, and, on more than one occasion, Mr. Campbell described Mr. Farmer as mentally incompetent."

William "Bill" Campbell, at the March 1, 1993 hearing, stated he was speaking loudly to Millard Farmer because he was accustomed to talking loudly to his elderly political constituents. This is a misleading statement. William "Bill" Campbell was yelling because he was mad and wished to vent his anger.

Ex Parte Communication

Superior Court Rules, Rule 4.1:

> Prohibition of Ex Parte Communications.
> Except as authorized by law or by rule, judges shall neither initiate nor consider ex parte communications by interested parties or their attorneys concerning a pending or impending proceeding.

Georgia State Bar Rules, Rule 3-107, DR 7-110:

> Contact With Officials.
> (B) In an adversary proceeding, a lawyers shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official whom the proceeding is pending . . . (emphasis supplied).

Emmitt Stephens and his counsel strongly suspected at the time of filing previous motions that William B. Hill and/or his law clerk and William "Bill" Campbell had engaged in an ex parte conversation with reference to the Motion to Disqualify William Campbell or other matters relating to William B. Hill's protection of William Campbell in this case. The proof of one ex parte communications was first revealed by William Campbell under cross examination at the March 1, 1993 hearing.

Millard Farmer confronted both William B. Hill and William "Bill" Campbell with the suspected ex parte communications during a hearing on Tuesday, September 8, 1992. Neither William B. Hill nor William "Bill" Campbell denied the fact of the ex parte communication or would assure Emmitt Stephens or his counsel that these communications had not occurred. Both William B. Hill and William "Bill" Campbell had an opportunity to deny the expression of suspicion about the ex parte communication; neither party denied the communication. They both thought they could avoid being

caught in this unethical misconduct, and they portrayed the allegation as unresponsible accusation.

Millard Farmer has complained both publicly and to judicial authorities about ex parte communications of William B. Hill with judges during the time Millard Farmer and William B. Hill were litigating against each other. This fact of William B. Hill's past ex parte communications was reiterated during the proceedings on Tuesday, September 8, 1992. Ex parte conversations have been as much a part of William B. Hill's advocacy skills as he could use without disciplinary action. He often violated the rules.

Georgia State Bar Rules, Rule 4-102. Disciplinary Action: Levels of Discipline: Standard 47 states:

> During the course of his representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior written consent of the lawyer representing such other party or is authorized by law to do so. A violation of this Standard may be punished by a public reprimand.

In the affidavit of Emmitt Stephens, the Plaintiff in this case, it is clearly set forth the unethical contact with Emmitt Stephens by William "Bill" Campbell. This affidavit is a part of Attachment 18 as Appendix 6.

> "7. After the hearing, I was waiting at the elevator to leave the courthouse. Up to this point I had not said anything to Mr. Campbell. While waiting for the elevator, Mr. Campbell looked at me and said in an angry voice, "do you want to say something to me?". Mr. Campbell approached very close to me and said to me in an angry voice, "why did you hire this white redneck plantation mentality lawyer?" He then said, "there are plenty of black lawyers you could have hired, why did you hire this racist white lawyer?" Mr. Campbell made several other derogatory comments about Mr. Farmer.

8. I was intimidated by Mr. Campbell's behavior and felt that he was trying to drive a wedge between me and my attorney.

9. After Mr. Campbell calmed down, he again asked if I wanted to say something to him. I responded, "yes." I did not want to discuss anything specific about my case with him; rather, I wanted to discuss racial issues and other problems confronting the black community. I also wanted to tell him that as a role model to young people, as a member of the City Council, that he should not have behaved the way he did outside the courthouse.

10. Mr. Campbell said we needed to get the judge's permission to speak with each other. Out of the presence of my lawyer, Mr. Campbell and I went to see Judge Hill. Mr. Campbell told Judge Hill that I wanted to speak with him; I corrected this and told Judge Hill that Mr. Campbell had asked if I wanted to speak with him and I accepted his invitation. Judge Hill told us not to speak with each other."

There was certainly no consent on the part of Emmitt Stephens for this contact and conversation by William "Bill" Campbell. This is a clear violation of Standard 47 of Georgia State Bar Rule 4-104. In addition to penalties that can be imposed by the State Bar, a lawyer violating Standard 47 can be disqualified from appearing in a case where the violation has occurred. This disqualification of William "Bill" Campbell is now being sought by Emmitt Stephens. In addition to Clos, et al. v. Pugia, 204 Ga. App. 843, 420 S.E.2d 774, see Cronin v. Eighth Judicial District Court, 781 P.2d 1150 (Nev. 1989); Mills Land & Water Co. v. Golden West Refining Co., 186 Cal. App. 3d 116, 230 Cal. Rptr. 461 (4th Dist. 1986); cf. Shelton v. Hess, 599 F.Supp. 905 (S.D. Tex. 1984).

William "Bill" Campbell admitted to some of this conduct under cross-examination at the March 1, 1993 hearing. William B. Hill heard these admissions and took no action, while being requested to do so by written pleadings, while sua sponte, taking contempt action against Millard Farmer.

There were legal reasons for the statements as contained in legal pleadings by Millard Farmer about William "Bill" Campbell's behavior and conduct in representing Harold Ivey and Bonny Associates. These reasons were to show why he should be disqualified as counsel. The name-calling events William "Bill" Campbell directed to Millard Farmer were fits of rage and anger. These verbal assaults were unethical conduct and most likely, illegal. There was no legal reason for William "Bill" Campbell's conduct.

William B. Hill sanctioned, and at times, encouraged, the conduct of William "Bill" Campbell.

After 9:00 a.m. on June 1, 1992, a time in which Mr. Campbell originally swore he was in Judge Hill's courtroom and not outside the courthouse, William "Bill" Campbell, before a crowd of over one hundred persons, approached plaintiff's counsel, Millard Farmer, in an angry manner; Mr. Campbell approached within inches of Millard Farmer and, pointing his finger in Millard Farmer's face, angrily shouted numerous derogatory accusations against Millard Farmer, including that Farmer was a redneck, a plantation mentality white racist, a racist, a coward, and a white redneck plantation mentality racist. This stream of loud derogatory accusations by Mr. Campbell continued in front of the large crowd for an extended period of time.

During the June 1, 1992 hearing before this Court, Mr. Campbell, in open court, on the record, in the course of a judicial proceeding, repeated his accusations that Millard Farmer was a plantation mentality white racist; in the course of the same judicial proceeding, Mr. Campbell, on more than one occasion described Farmer as "mentally incompetent." See Attachment 12, Transcript, June 1, 1992 proceedings, p. 7, lines 22-25; T-11, lines 15-16; T-25, line 24. These false accusations of mental incompetence were made during a judicial proceeding without a scintilla of supporting evidence. The allegations not only violated DR7-102(A) of the Code of Professional Responsibility, but were particularly egregious because of the extreme adverse consequences under Georgia State Bar Rule 4-104(a) to an attorney found to be mentally incompetent.

Georgia State Bar Rules, Rule 3-107, DR 7-108: Communication with or Investigation of Jurors.

On two occasions, the loud, boisterous comments made by William "Bill" Campbell to Millard Farmer and Emmitt Stephens were within easy hearing of potential members of the venire for the trial of this case.

Under cross-examination at the March 1, 1993 hearing, William Campbell testified he did not know the location of the jury assembly room in the Fulton County Courthouse. (This was his sworn testimony).

In the incident which occurred in front of the courthouse, there were numerous lawyers, their clients and possibly potential jurors who heard or could have heard the comments of William "Bill" Campbell directed to Millard Farmer.

On the occasion after the hearing, when William "Bill" Campbell talked in a loud voice to Emmitt Stephens, he was standing in front of the opened door to the assembly room for potential members of the jury venire. William "Bill" Campbell's comment to Emmitt Stephens, "Why did you hire this white redneck plantation mentality lawyer?" could easily have been heard by potential venire members. At the March 1, 1993 hearing, William "Bill" Campbell admitted a similar statement was made. William B. Hill took no action on this behavior by William "Bill" Campbell, even though there was a written and oral request to do so.

There was an issue at the June 1, 1992 hearing about the filing of a notice of appearance by William "Bill" Campbell in this case.

William "Bill" Campbell stated to the court that he was driving to the court on Friday afternoon to file the notice of appearance when he was halted by a call from Millard Farmer. William "Bill" Campbell further stated to the court at the June 1, 1992 hearing that he had filed the notice of appearance before that hearing.

The untruthfulness and unbelievability of these statements began to unravel on William "Bill" Campbell when Millard Farmer revealed that he had not received a time dated fax from William "Bill" Major informing him of William "Bill" Campbell's addition as counsel until after 5:00 p.m. on the Friday before June 1, 1992. This would have made the Farmer-Campbell phone call impossible before 5:00 p.m., because Millard Farmer did not have any idea of William "Bill" Campbell's involvement in the case until he received the fax.

Again, while under cross-examination at the March 1, 1993 hearing, William "Bill" Campbell retracted his previous statement. He stated that the notice of appearance could have been filed after the hearing on June 1, 1992, while at the June 1, 1992 hearing he advised the court the notice of appearance had already been filed. William "Bill" Campbell further explained that lawyers that knew their way around the Fulton County Clerk's Office could get papers filed after the close of the office. This is apparently another advantage an elected public official has over ordinary lawyers who must follow the rules of the court. William B. Hill made no inquiry about this type conduct by William "Bill" Campbell.

The Clerk of Court allowed the entry of appearance form, which was filled in by hand, to be filed without a certificate of service and a copy was never provided to counsel for Emmitt Stephens. Again, maybe an advantage a politician has above that of any ordinary lawyer. Again, no action by William B. Hill.

William "Bill" Campbell's unethical conduct has been so blatantly unethical that it seems useless to continue enumerating instances of ethical violations. The point to be made from these enumerated instances is in part that William B. Hill, for personal gain, has been allowing William "Bill" Campbell to engage in numerous acts of unchecked, unethical conduct, while sua sponte engaging in attacks against Millard Farmer.

There Is Now Proof That Confirms
Millard Farmer's Previous Strong Suspicions Of
Ex Parte Conversation Between William B. Hill
And William "Bill" Campbell

On Monday, March 1, 1993, William C. Campbell testified under oath that he had engaged in an ex parte conversation with William B. Hill and/or his law clerk, before the June 1, 1993 hearing. More particularly, he testified he presented a copy of the motion for the judge.

This testimony was significant because in the first motion to disqualify William B. Hill there was the following statement:

> Millard Farmer confronted both William B. Hill and William Campbell of this or these suspected ex parte communications of June 1st during a hearing on Tuesday, September 8,

> 1992. Neither William B. Hill nor William Campbell denied the fact of the ex parte communication or would assure Emmitt Stephens or his counsel that these communications had not occurred. Both William B. Hill and William Campbell had an opportunity to deny the expression of suspicion about the ex parte communication; neither party denied the communication. They both feigned innocence.

In the court's order on the second disqualification, the court stated:

> While Affiant contends of ex parte communications between the court and counsel for the Defendants, Affiant alleges no date upon which these supposed conversations occurred nor any alleged surrounding circumstances. If Affiant contends that these alleged ex parte conversations occurred on the date of the hearing on Plaintiff's Motion to Disqualify Attorney William Campbell, that being July 30, 1992, then this assumption, assertion, suspicion and personal opinion of Affiant is patently untimely, and Affiant has demonstrated no good cause for his failure to meet the time requirements of Rule 25.1.

The court knew full well or should have known that the ex parte conversations referred to at the September 8, 1992 hearing was the ex parte conversation between William "Bill" Campbell and William B. Hill before the hearing on June 1, 1993. However, regardless of the date of the ex parte conversations – it violated the canon of ethics and September 8, 1992 was the first day William C. Campbell and William B. Hill were confronted with the incident and both failed to confirm or deny the ex parte conversation. William B. Hill also feigned lack of previous knowledge of the motion to disqualify William "Bill" Campbell at the start of the June 1, 1992 hearing.

At the beginning of the June 1, 1992 hearing the "charade" of William B. Hill and William "Bill" Campbell began in the following manner:

THE COURT: GENTLEMEN, WHERE SHOULD BE BEGIN?

MR. FARMER: MAY IT PLEASE THE COURT, YOUR HONOR, MY NAME IS MILLARD FARMER. I HAVE FILED THIS MORNING A MOTION TO DISQUALIFY MR. CAMPBELL, ATTORNEY FOR HAROLD IVEY AND BONNY ASSOCIATES; AND I AM REQUESTING CERTAIN RELIEF.

I WOULD THINK THAT THE COURT WOULD HAVE AN OPPORTUNITY TO REVIEW THE MOTION, IF I MAY APPROACH?

THE COURT: THIS IS THE COURT COPY?

MR. FARMER: YES, IT IS; AND A COPY HAS BEEN FILED AND SERVED LAST EVENING UPON MR. CAMPBELL AND MR. MAJOR BY FAX AND AFTER THE COURT HAS HAD AN OPPORTUNITY TO REVIEW THE MOTION, I WOULD LIKE TO MAKE A STATEMENT.

THE COURT: LET ME READ MR. FARMER'S SUBMISSION, AND THEN I WILL HEAR BRIEF OPENING STATEMENTS FROM BOTH PARTIES SO AS TO GIVE ME SOME BACKGROUND, SOME FRAMEWORK; AND THEN I WILL HEAR YOU ON THE MERITS OF YOUR MOTION.

(BRIEF PAUSE.)

THE COURT: ALL RIGHT. MR. FARMER, I HAVE HAD AN OPPORTUNITY TO READ YOUR PLEADINGS. DO YOU WANT TO MAKE A BRIEF OPENING STATEMENT; AND THEN I WILL GO TO MR. CAMPBELL AND MR. MAJOR AND THEN WE WILL GO TO THE HEART OF YOUR MOTION.

Attachment 12, Transcript of June 1, 1992 Proceedings, pp. 2-3. At page 7 of this transcript, William "Bill" Campbell states:

> MR. CAMPBELL: YOUR HONOR, I AM BILL CAMPBELL. I HAVE FILED AN ENTRY OF APPEARANCE FORM THIS MORNING IN THIS CASE.
>
> (Emphasis supplied).

William B. Hill knew there had been an ex parte conversation with William "Bill" Campbell before the June 1, 1992 hearing. Candor, fairness, decency and honesty would require an admission of this and not a continuing effort to conceal this from Millard Farmer, who had raised the issue in a motion for disqualification of William B. Hill.

The time for a disqualification motion runs from the date counsel learns of the misconduct, not the date of the misconduct as indicated in the order of William B. Hill denying the second disqualification motion, which is Attachment 5.

William "Bill" Campbell Has A Serious Conflict Of Interest In This Case

William B. Hill has failed to address this conflict of interest as adequately identified in Emmitt Stephens' response to the motion to strike.

William "Bill" Campbell owes a duty to the citizens of Atlanta as a public official. This duty cannot be waived. The ethical and legal obligation to the citizens of Atlanta are covered by such guidance as his oath of office, common law conflict of interest restraints and constraints enumerated by law. People who do business with the City of Atlanta and are appointed to positions by the City of Atlanta are entitled to ethical and legal protections from a public official who wants to hit on them to be a witness for one of his the public official's clients.

A public official can't hit on potential witnesses for private clients without breaching his duties to the citizens of the City of Atlanta. William "Bill" Campbell indicated he planned this conduct in the pretrial motion; William B. Hill would take no action to prevent this.

The motion to disqualify William "Bill" Campbell dealt with these serious ethical considerations, as did the response to the motion to strike. In cases involving racial discrimination, a high standard must be adhered to by public officials of this world class city. A judge such as William B. Hill, who is not

sensitive to issues of racial discrimination should not be presiding.

Some of the witnesses who were added to the lists of witnesses after William "Bill" Campbell slipped into the case the day before its scheduled start of trial were as follows:

Herman J. Russell
Ira Jackson
J.O. Wyatt
Leroy Johnson

These are individuals whose names are synonymous with government in this area of the state. They are people who were not witnesses before this politician/lawyer entered this case. These are people who know nothing about the case except what they may have been told.

William B. Hill Is Not Placing This Case On The Trial Calendar Because of His Bias Against Millard Farmer

The prejudice of William B. Hill continues to be apparent in his constant delay in scheduling the trial of Emmitt Stephens' case. At the hearing on March 1, 1993, Millard Farmer attempted to get clarification from William B. Hill as to when this matter would be scheduled for trial. In a manner that can only be described as intemperate, discourteous and injudicious, William B. Hill informed Millard Farmer that he could not tell him when the trial would be scheduled nor would he answer Millard Farmer's questions as to his procedure for scheduling cases.

William B. Hill refused at the Monday, March 1, 1993 hearing to allow his calendar clerk to answer questions about William B. Hill's intentional and deliberate delay of Emmitt Stephens' case – delay because of William B. Hill's bias against Millard Farmer and William B. Hill's desire to gain favor from William "Bill" Campbell.

On the June 1, 1992 and June 8, 1992 trial calendar of Judge William B. Hill, this case was the third case. The number one and number 2 cases were tried. This case should have been number one on the August 17, 1992 trial calendar which was issued on Thursday, July 23rd. The case did not even appear on that trial calendar. (The August 17 trial calendar, issued on July 23 is attached to the second motion to disqualify William B. Hill as Appendix A)(See Attachment 4).

On May 29, 1992, after 5:00 p.m., William Major, for the first time, notified counsel for Emmitt Stephens that William C. Campbell would be added as additional counsel. Millard Farmer moved to disqualify William "Bill" Campbell by motion. Judge Hill became enraged at the motion to disqualify William C. Campbell and verbally berated Millard Farmer. At this time, Millard Farmer became justifiably suspect of William B. Hill's behavior. Before this time, William B. Hill had expressly stated to Millard Farmer that he would be fair, notwithstanding the long number of years that the two had opposed each other.

Millard Farmer made a visit to the office of William B. Hill's calendar clerk to be sure this case would be on the next trial calendar after the June 1 and June 8, 1992 trial weeks. The calendar clerk, Nell Knight, advised Millard Farmer that the case would not be on the calendar if motions were pending. Millard Farmer stated that he would dismiss the motion for deposition of the new witnesses in order that the case could be on the next trial calendar. The motion was withdrawn and the reason for the withdrawal of the motion for depositions is stated in the withdrawal. A copy of this withdrawal of the motion for depositions is attached as "Appendix B" to the second motion to disqualify William B. Hill. This is Attachment 4.

Millard Farmer then talked with the calendar clerk to be sure the case would be on the next trial calendar, as he had been advised. The calendar clerk stated she would have to obtain permission of Judge Hill to place the case on the trial calendar because defendants' pending motion for sanctions. This motion is Attachment 13. It was baseless and determined by William B. Hill to be filed prematurely. See Order at Attachment 15. Defendants' motion for sanctions did not contain any issues which would affect the ripeness of this case for trial; it solely sought sanctions for alleged past behavior of plaintiff's counsel. William B. Hill refused to allow the case to be placed on the trial calendar because counsel for the defendants wanted a delay and William B. Hill exercised his bias against Millard Farmer by delaying the case.

The case is continually held off the call for trial because of William B. Hill, who refuses to explain his reason for not allowing the case to proceed to trial.

The prejudice of William B. Hill was most apparent at the Tuesday, September 8, 1992 hearing in his blatant disregard of the truth in relation to the reason for the delay in the trial.

William B. Hill chose, in a finding of fact, to characterize the delay as follows:

> "The court cannot help but note that but for Plaintiff's action in filing his motion to reopen discovery, this matter would have proceeded to trial as originally scheduled."

This characterization of the delay was not based upon fact and Millard Farmer so informed William B. Hill immediately preceding his dictation of the order. William B. Hill refused to correct the incorrect finding of fact before signing the order. This is but a small example of the untruthfulness of William B. Hill.

The Beginning Pattern Of Discrimination By Counsel for Harold Ivey and Bonny Associates

As Emmitt Stephens began the discovery process in this case, he was greeted with a double dose of counsel for Harold Ivey and Bonny Associates' feeling about him and the status of African American people.

These issues are included in their entirety here to identify the continuing pattern of abuse and expense counsel for Harold Ivey and Bonny Associates have heaped upon Emmitt Stephens.

The response to the Jones, Day motion to compel discovery was as follows [This identical language is found in pages 1-30 of Attachment 6]:

> Preface
>
> This document deserves an opening explanation. It is filed (1) in response to defendants' "Motion to Compel Discovery and for Protective Order;" and, (2) as a traverse and rebuttal to the Certificate Pursuant to Uniform Superior Court Rule 6.4 (Good faith effort to resolve the matters involved). It contains: (1) an overview of the case (p.3); (2) a statement of the dispute before the Court (p.5); (3) a traverse and rebuttal to the certificate pursuant to the Uniform Superior Court Rule 6.4 (p.15); (4) a motion to dismiss the "Motion to Compel Discovery and for Protective Order" (p. 17); (5) a memorandum of law

(p. 18); (6) an affidavit in support of attorney's fees (p. 31); (7) affidavits by Emmitt Stephens and Millard Farmer verifying facts in this document (pp. 32 and 33); and (8) a request for relief including sanctions and attorneys fees to be assessed against the opposing parties (p. 34).

The antebellum branch of Jones & Day in general and particularly, Greg Hanthorn, are abusing the Court in using it to resolve the discovery problem that they have created. This type behavior by counsel is the very reason for Superior Court Rule 6.4.

6.4 Failure to Make Discovery and Motion to Compel Discovery

(B) Prior to filing a motion to compel discovery, counsel for the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the matters involved

. . . .

The Court must take immediate and stern action or it will be perceived as joining the team that is racially discriminating against Emmitt Stephens.

Human nature as it is, the Court may feel after a first reading of this document that in some way the authors of this document (right as they are) should be penalized for roughing the antebellum branch of Jones & Day. Nothing could be further from justice. Greg Hanthorn, acting for the antebellum branch of Jones & Day is assisting Harold Ivey and Bonny Associates in discriminating against Emmitt Stephens. Harold Ivey, Bonny Associates and the antebellum branch of Jones & Day deserve every ounce and line in this document. We only regret it is not more. Every person and entity should be grist for a racist mill.

I. OVERVIEW OF CASE

Emmitt Stephens brought a civil rights action against Harold W. Ivey and Bonny Associates. Emmitt Stephens is an African-American person. Harold W. Ivey is a white male and Bonny Associates is a partnership created by and for the benefit of persons all of whom are white.

Harold Ivey and Bonny Associates are now discriminating against Emmitt Stephens in that they will

not lease him a building in Newnan, Georgia. Harold Ivey and Bonny Associates agreed to lease Emmitt Stephens a building and then began adding conditions to make occupancy impossible. The conditions were added to prevent Emmitt Stephens from leasing the building because he is an African-American.

Emmitt Stephens, in his complaint, quoted some of the language used by Harold Ivey as an indication of Ivey's racial attitudes. The sworn complaint reads:

> 27. When it became unquestionably obvious that the defendants were discriminating against Emmitt Stephens because he was an African-American, Emmitt Stephens, in late November, 1989 spoke with Harold Ivey in a telephone conversation initiated by Ivey. In this conversation, Ivey was extremely abusive to Emmitt Stephens, called Emmitt Stephens a "son of a bitch", referred to African-Americans as "you people" and Ivey, denying discriminatory intent, Ivey said, in his own words, "I rent to coloreds."
>
> 28. In a conversation with another person, Harold Ivey again, denying discriminatory intent, said, in his words, " . . . I rent to coloreds, I rent to Koreans . . . ."
>
> 29. Emmitt Stephens here refers to himself as an African-American. He is a member of group of American citizens that was first brought to this country as slaves. This group of people remained slaves and property of other Americans until 1865. There has been an evolution of identity and designation of persons with Emmitt Stephens' heritage. In the history of this country, the terminology of "nigger," "Negro," "colored," and "black" are the most common designations used in this evolution of terminology. Each time the terminology was changed, it was done to change the implication of stigmatization that the previous term held. The designation of "colored" was dropped in part maybe to change the memory of the many signs designating

restricted areas for use by African-Americans. For whatever reason for the demise of this designation, it has ceased being used today by people who have any sensitivity to the racial discrimination that has existed in this country.

30. Today, "colored" is the language of a segregationist mentality, a mentality that implies white persons have a privileged position in our society, superior to that of other persons.

31. Harold Ivey's usage of the term "colored" is only a beginning calling card of his racial attitudes.

Gary Hatch, a partner of the antebellum branch of Jones & Day, in his initial conversation with Millard Farmer, defended the usage of the term "colored" when identifying the race of African-Americans.

Gregory Hanthorn, the attorney assigned the case by the antebellum branch of Jones & Day, when answering the complaint, denied that ". . . 'colored' is the language of a segregationist mentality, a mentality that implies white persons have a privileged position in our society, superior to that of other persons."

Both on and off the record, the antebellum branch of Jones & Day sanctions the use of the term "colored" when referring to African-American people. There is no dispute that Harold Ivey uses the term "colored" when referring to African-American persons.

II. STATEMENT OF THE DISPUTE NOW BEFORE THE COURT

Emmitt Stephens is a highly compensated computer systems consultant who on an average earns approximately $65.00 per hour. He lives in Newnan, about 40 miles from Atlanta, but travels this country

from coast to coast in his business. Time is a precious commodity with him. It was therefore very desirable for him to have his deposition set at an agreeable time in order that he would not have to travel from maybe Washington, D.C. or the west coast to attend. The attorneys for the parties also maintain that they have tight schedules and it would be an advantage to them to have the deposition occur at an agreeable time. The attorney for Emmitt Stephens agreed that the depositions of Emmitt Stephens and Cathy Stephens could be taken in the offices of the antebellum branch of Jones & Day.

A. First Move and Countermove

In making this agreement regarding time and location of the deposition, Millard Farmer, the attorney for Emmitt Stephens asked for one concession. Millard Farmer requested that the copy of the transcript of the deposition for signing be provided Emmitt Stephens and Cathy Stephens at their residence in Newnan rather than at the office of the court reporter in Atlanta. This request was perfected by the last paragraph of a letter dated August 24, 1990. (Exhibit B):

> I have your letter of August 21st; it is correct. In order that the depositions can go off without delay, I feel that I should advise you further as to our expectations. I am sure you will have a court reporter; however, wee will require a reporter that will provide the deposition for reading before signing at either our office or Mr. & Ms. Stephens' home. We will tape record while at your office.

Greg Hanthorn or his supervisors had obviously become angry or revengeful because of the first two paragraphs of the above identified letter which was as follows:

> I have your answer; it reflects on the part of Jones &

> Day the same level of commitment to reducing racism that is exhibited by your client. Your assertions in paragraphs 27 and 30 are beneath the dignity of an educated person. I hope your consciousness on issues of race will be raised during this litigation.

Greg Hanthorn responded by a letter dated August 30, 1990 (Exhibit C), which in pertinent part reads:

> I have engaged Brown Reporting, Inc., to take the depositions. Their phone number is 876-8979. If you have any additional requirements or expectations beyond those ordinarily imposed upon court reporters, please discuss those directly with Brown Reporting. As you know, Georgia law does not provide for the sue of a tape recorder during a deposition absent a prior court order (O.C.G.A. §9-11-30(b)(4)). If you decide to move for such an order, please provide Gary Hatch or me with reasonable notice.

B. Second Encounter

After receiving the August 30 letter, Millard Farmer called Greg Hanthorn and took issue with both his failure to agree to the copy of the deposition supplied for signature at his office or at the residence of Emmitt Stephens and Cathy Stephens and the assertion of an inapplicable provision of law relating to the use of a tape recorder. Millard Farmer told Greg Hanthorn he was wrong about the law regarding the tape recorder and explained that the code section he had cited only

applied to the substitution of a tape recording for stenographic means. O.C.G.A. §9-11-30(b)(4):

> The court may, upon motion, order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

Millard Farmer further told Greg Hanthorn that he was not going to trouble or waste the time of any court for an unnecessary order. Greg Hanthorn offered no cases or authority to support his position during the phone call, excepting his erroneous interpretation of the code section cited in his letter.

C. The Deposition

Morning started early for Emmitt Stephens and Cathy Stephens the day of the deposition. Emmitt Stephens didn't sleep well because he thought his future plans for the space he wanted to lease from Bonny Associates depended on his accuracy and memory in answering questions of the lawyers at the mighty law firm of Jones & Day's antebellum branch.

Long before the crack of day, the Stephens were readying themselves for the trip to Atlanta and their children for an early drop off at school.

Emmitt Stephens and Cathy Stephens, after reaching Atlanta, met with the people working on the case, then they started the walk from their lawyers' small office on Nassau Street to the high office tower that houses the antebellum branch of Jones & Day.

At the reception desk, they were friendly greeted and directed to one side of giant room floored

with expensive rugs and decorated to cut the chill of the sterile atmosphere.

After a few minutes, an air of comfort spread over the people standing in the reception room waiting. A well-dressed African-American person passed near the group and gave an approving smile. This is a person that Harold Ivey, the defendant in this case, would call "colored" and this terminology would be sanctioned by the antebellum branch of Jones & Day. The air of comfort fizzled as this person was determined to be a person delivering the inter-office mail. Next, a young African-American person hastened through the office -- this person was a messenger. This person, too, is a person that Harold Ivey, the defendant in this case, would call "colored" and this terminology would be sanctioned by the antebellum branch of Jones & Day. The next person in view was an individual in a white uniform, the type uniform usually reserved for a domestic worker of several decades ago. This person, too, was African-American and was serving coffee. Again, this is a person that Harold Ivey, the defendant in this case, would call "colored" and this terminology would be sanctioned by the antebellum branch of Jones & Day.

After a few quietly mumbled words such as, "goodness gracious, these people are '40's mentality," the heightened tension rose as we waited our first glance of Greg Hanthorn. Unknown to us the moment was about to arrive as a youngish, preppy-dressed, short statured white male walked in the room with a Souter-type demeanor. This individual eyed the waiting people to find Millard Farmer. Greg was introduced and he stated, "Unfortunately, we have not reserved the First Atlanta Tower auditorium."

I informed him that Emmitt Stephens, Cathy Stephens, and the five of us with them could find adequate room in their deposition room. For sure, there was adequate room. The individual we met who had been delivering the mail earlier in the day brought two extra chairs to the room and everyone was seated with comfort and ready for the deposition to begin.

Greg Hanthorn then informed us he would go get his client representative. Calvin Tatum, a white male of some years, came to the room and was introduced. Calvin Tatum responded by saying, "Hello, Emmitt." He was quickly corrected by Greg Hanthorn, with a non-verbal movement followed by the words, "Mr. Stephens."

The deposition began and is included in its entirety since the exchanges are so pertinent to the effort made by Millard Farmer to resolve the disputed issue. Not only was there no good faith effort by the antebellum branch of Jones & Day, there is strong evidence that they were acting in bad faith:

APPEARANCES OF COUNSEL:
On behalf of the Plaintiff: MILLARD FARMER, Esq.
JOSEPH M. NURSEY, Esq.

On behalf of the
Defendants: GREGORY R. HANTHORN, Esq.
GARY W. HATCH, Esq.

Also Present: Mr. Calvin Tatum
Mr. Bill Batson
Ms. Cathy Stephens
Mr. Wing Newland
Ms. Rita Sethi
Ms. Kimellen Tunkle

MR. HANTHORN: This is the deposition of Emmitt Stephens, the plaintiff in this action, taken pursuant to Notice and in accordance with the Georgia Civil Practice Act.

Before we begin, Mr. Farmer, as I discussed with you in a letter dated August 29th and as we discussed on the phone Monday, would you please turn off the tape recorder.

MR. FARMER: No, I will not. I have the tape recorder for my personal use and not for the use of the official transcript. We have a court reporter here that, as I understand, is taking down the proceedings; and under Georgia law I feel that I am entitled to have a

tape recorder for my personal use, not for the official record, and I'm so exercising that privilege and right.

Is there any reason that you know of that I shouldn't have the tape recorder?

MR. HANTHORN: The ones expressed in my letter.

MR. FARMER: What is the authority, please?

MR. HANTHORN: The letter will speak for itself, Mr. Farmer; and I have one question of you at this point. Are you planning on taking the same position with the deposition noticed and scheduled for 3:30 today with respect to the tape recorder?

MR. FARMER: I am taking the position at this time and with regard to this and I will take other positions as the time comes.

MR. HANTHORN: Then we are adjourned until 3:30. We'll be moving for an order, and I'm sorry that you didn't see fit to contact me yesterday. We could have saved your clients the trouble of driving down to allow them the time or you the time to object and gotten the appropriate court order.

MR. FARMER: I wanted to give you time to capitulate, and I wanted to give you time to research the law, and I want to tell you incase -- have you researched the law on this issue?

MR. HANTHORN: I will discuss that at the appropriate time and place.

MR. FARMER: I ask have you researched the law? Please, answer my question.

MR. HANTHORN: No, sir, I'm not answering your questions. The appropriate time and place for that is --

MR. FARMER: I will tell you I have researched the law on this issue and to the best of our knowledge and I know of no reason or any provision that you have for abating this deposition because of the fact that we are using a tape recorder.

MR. HANTHORN: Then I regret that you did not see fit to bring that law to the attention of a judge and seek an order.
MR. FARMER: We don't have to seek an order to be able to carry out such rights as to wear a coat and tie, such rights to be present, and this is just one of those basic rights.
MR. HANTHORN: I appreciate your time in coming down, sir. I will be available to take the deposition at 3:30 as scheduled, although if you are planning on using the tape recorder there --
MR. FARMER: I'm going to use the tape recorder at every deposition that I appear at.
MR. HANTHORN: Then you have my word that I will not, with respect to the 3:30 deposition, I'm certainly not going to require you to show up and go through this same routine. Thank you for your time, sir.
MR. FARMER: You understand that my position is that you're going to be forfeiting your right to take the deposition if you walk out of here and don't take the deposition at this time, that we are going assess you for costs. Do you understand that?
MR. HANTHORN: I understand that you can advocate that position.
MR. FARMER: Do I understand that you are telling me that you have no case that authorizes you to do this, no case law to support your position; is that correct?
MR. HANTHORN: I understand that this is not the appropriate time or forum to argue the law.
MR. FARMER: If you will show me some case law or something, I may change my position. Do you have any law other than what you have quoted me in your letter? I have other law and I will be glad to discuss it with you at this time so that you will change your position. Would you like to hear my discussion

of the law and will you tell me do you have any law?
MR. HANTHORN: Mr. Farmer, you're engaging in gamesmanship. This deposition is over.

As the transcript of the deposition shows, there was never a request that any of the people not attend the deposition and nor even a hint of displeasure excepting the snide opening remark made in the reception room about not reserving the auditorium of the First Atlanta Tower.

Not one word has been mentioned about who would attend the deposition since the opening snide remark. The first and only request that the people attending the deposition not attend is in the motion now before this Court. There was not even a scintilla of effort to resolve this issue without coming to this Court. The only thing threatening to the antebellum branch of Jones & Day about the people present at the deposition was the fact that not all of the people were white.

D. Other Encounters

At the end of the deposition, Greg Hanthorn informed Cindy Brown, the court reporter, not to provide the deposition on an expedited basis. Millard Farmer called Cindy Brown and arranged for the transcript to be produced immediately. By a letter dated September 13, Millard Farmer informed Greg Hanthorn that he wanted the transcript at once, as "time is important to us in this case as we want possession of your client's building as soon as possible." In this letter, Millard Farmer told Greg Hanthorn, "We are engaging in nerd dispute resolution."

After office hours on Thursday, September 13, Greg Hanthorn left a message on our answering machine that he would like to speak to Millard Farmer. The call was returned early Friday morning, but Greg Hanthorn was not available for the call. The call was again returned from a pay phone at around 11:00 a.m., Greg Hanthorn began the conversation by stating that he wanted Millard Farmer to know how nice and helpful the people at our office had been to him. Greg

Hanthorn then advised Millard Farmer that the Superior Court Rules required that he make a good faith effort to resolve a discovery dispute before bringing a motion to compel. Millard Farmer acknowledged to Greg Hanthorn that he was aware of the rule, and further plainly stated that there had not been a good faith effort to resolve the problem.

Millard Farmer again informed Greg Hanthorn that he would like to know if Greg Hanthorn had any case to support his position. Greg Hanthorn said he only wanted to advise he was making an effort to allow us to change our position so he could file a certificate of compliance with the good faith rule. Millard Farmer again informed Greg Hanthorn that he had not made a good faith effort to resolve the discovery dispute.

At no time during the conversation nor at any other time has Greg Hanthorn said he was dissatisfied with the people who attended the deposition. At no time has he discussed any case or offered to listen to caselaw we wished to discuss with him.

On the afternoon of the phone conversation, Greg Hanthorn filed the motion and brief now pending before the court. Why couldn't he discuss or even read his brief and motions to Millard Farmer before they were filed? Maybe because the dispute would be resolved. Maybe then he would not get a delay in time that would discourage Emmitt Stephens from wanting to lease his client's building. Maybe he would lose an opportunity to bill a number of hours for nothing but busy work. A lot of maybe's can be inserted, but non consistent with the compliance of good faith required by the Superior Court Rules.

III. EMMITT STEPHENS' TRAVERSE TO THE "CERTIFICATE PURSUANT TO UNIFORM SUPERIOR COURT RULE 6.4"

(Good faith effort to resolve the discovery matters involved)

This section is a traverse and rebuttal of the certificate of Greg Hanthorn required by Uniform Superior Court Rule 6.4. Additionally, it is to support our request for a dismissal of his motion. In street

language, this section is to state, in the strongest way possible, that Greg Hanthorn has either given a false and incorrect statement to the Court or, he doesn't understand good faith. Neither is acceptable. The facts contained in other portions of this document are incorporated and made a part of this traverse and rebuttal.

Greg Hanthorn has refused or failed to listen to any cases from the Plaintiff that discuss the dispute. At one point, Greg Hanthorn said a discussion of law was "gamesmanship" (supra; Deposition at p. 6). Even on the day he filed the emotion and brief in the court, he would not discuss the law. Certainly on the day the brief was filed he should have been able to discuss his cases with opposing counsel or at least let the person who did the legal research discuss the cases with opposing counsel.

Another prerequisite of good faith would require that the antebellum branch of Jones & Day state the reasons the taping of the proceeding were objectionable. This would have given the plaintiff an opportunity to offer suggestions as to how the objections could be satisfied. Additionally, they should have stated to the plaintiff the things they would have told the Court in opposition to taping the hearing for personal use. Until this moment they have not stated one good reason the tape record should not be allowed. At a minimum they should detail the reasons for their objection to the tape recorder before a certificate could have been signed that complied with Rule 6.4.

Good faith can be many things -- it has been none of these things to the antebellum branch of Jones & Day.

IV. MOTION TO DISMISS MOTION TO COMPEL DISCOVERY AND FOR PROTECTIVE ORDER

Emmitt Stephens moves the Court to dismiss the motion to compel discovery based upon facts contained throughout this document for the reasons (1) that the certificate of a good faith effort to resolve the discovery has been rebutted and traversed and (2) because the

motion to compel discovery fails to present a claim upon which the relief requested can be granted. Emmitt Stephens further moves to dismiss the motion for a protective order as it fails to present a claim upon which relief can be granted.

Counsel for Emmitt Stephens assures the Court that this document contains all the relevant facts on the good faith issue. In order that the antebellum branch of Jones & Day will not claim unfairness in the dismissal, we would suggest an opportunity for them to present any other facts they may have relative to the good faith prerequisite within five days after the order. If they present any facts under oath that support the good faith prerequisite, then the Court could vacate the dismissal and proceed with a truth-finding hearing.

V. MEMORANDUM OF LAW

A. The Antebellum Branch of Jones & Day' Is Either Grossly Negligent or Deceitful in Not Presenting to the Court Montgomery Mills, Inc. v. Giffen-Burgess Corp. and Champagne v. Hygrade Food Products, Inc.

1. In the event the Antebellum Branch of Jones & Day is Negligent.

If in the course of their research, the antebellum branch of Jones & Day has failed to uncover these cases unfavorable to their position, they must be extremely sloppy and their motion and brief before this Court is not worthy of being considered. The antebellum branch of Jones & Day displays utter disrespect for the system to produce a document to be considered by the court that has not been thoroughly and carefully researched.

2. In the event the Antebellum Branch of Jones & Day is Deceitful.

If in conforming with the antebellum branch of Jones & Day's modus operandi, they have failed to disclose case law unfavorable to their position to the Court this is deceit at the pinnacle.

Counsel for the defendant has failed to disclose Montgomery Mills, Inc. v. Giffen-Burgess Corp., 60

F.R.D. 105 (D.Del. 1974) and Champagne v. Hygrade Food Products, Inc., 79 F.R.D. 671 (E.D. Wash. 1978), both cases standing for the proposition that a tape recording of a deposition may be made for the personal use of attorneys in addition to stenographic recording without a pre-deposition order. The antebellum branch of Jones & Day has cited authority from all across the nation, including the Fourth and Second Circuits, and from cases reported in the Federal Rules Decisions (F.R.D.). It is unlikely in such an in-depth search that counsel could have overlooked these cases. The antebellum branch of Jones & Day knowingly failed to disclose these cases because they are adverse to the interests of their client. "A lawyer is an officer of the court. His obligation to the public is no less significant than his obligation to his client. It is his duty to aid the court in the due administration of justice." In re Greenberg, 15 N.J. 132, 104 A.2d 46, 48 (1954) quoting the Committee on Professional Ethics and Grievances, July 17, 1935, Opinion 146. Here this is particularly egregious since on several occasions Millard Farmer sought an opportunity to discuss the law with Greg Hanthorn.

B. Misapplication of O.C.G.A. §9-11-30

The antebellum branch of Jones & Day has misapplied the facts of this case to the law regarding tape recording depositions. O.C.G.A. §9-11-30 refers to tape recording in lieu of an official court reporter. On more than one occasion, Millard Farmer clearly explained to Greg Hanthorn that the use of a tape recorder was purely for personal use and not for use at trial, for evidence, or in any way as a substitute for the official reporter's transcript Therefore, O.C.G.A.§9-11-30 does not govern or prohibit such use.

The antebellum branch of Jones & Day urges the Court to misconstrue the clear meaning and intent of the law. The language of O.C.G.A. §9-11-30 (b)(4) refers to nonstenographic means as a replacement for an official stenographic reporter:

The court may, upon motion, order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

The section would not be concerned with issues of accuracy and trustworthiness and how to file the record unless the nonstenographic means was to be official form of recording. Read in concert with O.C.G.A. §9-11-30 (c) (1), it becomes entirely obvious that the section was written to provide for substitutions for the official record. " . . . The testimony shall be taken stenographically or recorded by any other means ordered in accordance with paragraph (4) of subsection (b) of this Code section."

Since we sought to use a tape recorder for our own use only, and not to replace the official reporter, who was present at the aborted deposition, O.C.G.A. §9-11-30 does not apply to these facts.

The inapplicability of §9-11-30 to these facts is clear when one recognizes the distinction between using the tape recorder as a substitute for a court reporter, and using it in addition to a court reporter. In Champagne v. Hygrade Food Products, Inc., 79 F.R.D. 671 (E.D. Wash. 1978) the Court granted permission for counsel to tape record the deposition instead of hiring a stenographic reporter, and also tape record depositions with a separate tape recorder for personal use. Taking the deposition by other than stenographic means is governed by Rule 30 (b)(4) Federal Rules of Civil Procedure, and is permissible subject to conditions insuring accuracy. "This relatively new means of recording deposition testimony is designed to reduce costs of discovery and other pretrial recording proceedings and should be encouraged whenever its use can be accomplished without loss of accuracy and integrity, with attendant economy as against

stenographic reporting." Id. at 673. Recording in addition to an official transcript, in this case, for the purposes of "notetaking superior to that which could be done by hand with an attorney present," Id .at 674, is granted partially because the defendants cite no authority for denying permission to record. Id. at 674. The Court's application suggests that 30 (b)(4) F.R.C.P., and its analogous provision in Georgia law, O.C.G.A. §9-11-30 (b)(4), have no bearing on the personal use of a tape recorder, but exclusively apply when counsel is seeking to circumvent the requirement of a stenographer in §9-11-30 (c)(1).

Defendant counsel's use of case law does not reflect an understanding of this difference. Greg Hanthorn cites U.A.W. v. National Caucus of Labor Committee, 525 F.2d 323 (2d Cir. 1975), as an example of a court's refusal to permit tape recording because of the potential for abuse of the tapes. Counsel fails to recognize that the court is concerned with tape recording to the exclusion of a more neutral official court reporter; this is apparent even by defendants' counsel's own choice of language from the case: "[magistrate] indicated agreement with plaintiff's contention that the proposed recording and transcribing by persons interested in the outcome of the suit was most inadvisable." Id. at 324. The court's fear is that people with a vested interest in the case should not be in charge of the only official record of the proceedings.

Use of a Tape Recorder for Personal Use
Does Not Require a Prior Court Order

Case law supports the personal use of a tape recorder by attorneys at depositions without prior order. Montgomery Mills, Inc. v. Giffen-Burgess Corp., 60 F.R.D. 105 (D. Del. 1974). In Montgomery, plaintiff's counsel did not seek a court order to tape record the deposition. The case was brought before the court only on defendant's counsel's objection to recording as disruptive. The Court denied defendant's motion, holding that plaintiff's counsel was permitted to use a tape recorder to record deposition testimony for his own

use, and never made mention of the need for a prior court order.

The antebellum branch of Jones & Day argues that tape recording the deposition for personal use should be prohibited absent a court order. The cases that they use to support such a proposition are distinguishable by completely different fact patterns that might warrant court intervention. In Dubois v. Ray, 177 Ga. App. 349, 399 S.E.2d 605 (Ga. App. 1985) and Perry v. Mohawk Rubber Co., 63 F.R.D. 603 (D.S.C. 1974), aff'd, 529 F.2d 516 (4th Cir. 1976), the courts require an order to permit a videocamera at the depositions to provide evidence and information to be used at trial. In both Dubois and Perry, a videotape was to be used to illustrate the situation for the jury. In Dubois, the deposition was taken outdoors, in order to indicate to the house in reference to questions about ongoing construction. The use of a videocamera for the presentation of evidence at trial cannot be compared to the unofficial personal use of a tape recorder. "On the other hand, the use of a tape recorder presents few of the problems which would arise with the use of a videotape." Perry v. Mohawk Rubber Co., 63 F.R.D. 603, 605 (D.S.C. 1974), aff'd, 529 F.2d 516 (4th Cir. 1976).

The antebellum branch of Jones & Day is consuming the Court's time with frivolous matters that lengthen the process, delay review of the substantive issues, and incur costs to all parties. Defendants' counsel has at no point stated any specific objections to the use of tape recording or requested any conditions on recording, but has unreasonably demanded a tape recorder not be used at any proceedings.

C. The Antebellum Branch of Jones & Day Wants to Exclude From the Deposition People Providing Emmitt Stephens Legal Assistance

This case is about white people excluding African-American people from full and equal enjoyment of citizenship rights and participation in the mainstream of American society. It is about white people reserving certain spaces for themselves to the exclusion of

African-Americans. This case was brought to remedy exclusion by white people, and this is precisely what the antebellum branch of Jones & Day is trying to do in this deposition. Bonnie Associates would exclude African-Americans from leasing property, white community people would exclude African-Americans from opening a place of entertainment in Newnan, and the antebellum branch of Jones & Day would exclude African-Americans from participation in the legal process.

Greg Hanthorn - Gary Hatch - Harold Ivey - Bonny Associates - Antebellum Branch of Jones & Day: you may be able to keep us from leasing property that has been reserved for whites only, but you can not keep us from our constitutional and human right to employ the legal system to oppose your actions. You can not exclude us from a forum where our rights are paramount to your bigotry. You can not exclude us from participating in the litigation of this matter. You may deny us access to your office, where your prejudice prevails as law; but in public forums, such as the Fulton County Courthouse, our office, the Fulton County Government Building or City of Atlanta buildings, all people are welcome, and the intent of our constitution, as amended, prevails.

The antebellum branch of Jones & Day's demand to restrict the number of persons at the deposition is not based on any legal authority or pragmatic purposes. They use rules and cases that refer exclusively to witnesses and not to other persons. The antebellum branch of Jones & Day also fails to demonstrate good cause for limiting attendance, and instead engages in conjecture and hypersensitive analysis.

1. O.C.G.A. §9-11-26 does not apply to non-testifying non-parties

The rules urged apply only to the sequestration of witnesses at trial. The policy reasons behind the sequestration rule reveal that its intended object is to separate testifying witnesses. Martin v. Porak, 638 P.2d 853, 854 (Colo. App. 1981). "Given the fallibility of human observation, recollection and communication, it may be imperative to sequester individuals who are

testifying about the same incident so that the independent recollections and descriptions of each witness can be maintained." Kris Kostolansky, "Sequestration of Deponents in Civil Litigation," 15 Colorado Lawyer 1028, (June 1986). The only possible witness present at the deposition was Cathy Stephens, as such, these rules are not applicable to any of the other persons present at the deposition. Greg Hanthorn at no point during or before the deposition, in his correspondences or communications, requested Cathy Stephens to be excluded from the deposition of her spouse. This suggests that the intention of Greg Hanthorn is to misconstrue the law for the sake of harassment, rather than apply the law for its legitimate purpose of separating witnesses during testimony to insure their credibility.

Greg Hanthorn's choice of case law further elucidates the objectives and reach of the laws cited, and demonstrates his misapplication thereof. Lumpkin v. Bi-Lo, Inc., 117 F.R.D. 451 (M.D.Ga. 1987) and Beacon v. R.M. Jones Apartment Rentals, 79 F.R.D. 141 (1978) both refer to the exclusion of other witnesses at depositions. In Beacon, the Court delineates reasons for sequestration, reasons which can only refer to the exclusion of witnesses and not other persons: "Questions of credibility are inherent in such actions, and this route, which is the equivalent of an order of separation of witnesses, made routinely in trials, will permit the greatest opportunity for evaluation of the testimony secured." Id. at 142 (1978). The presence of persons other than witnesses at a deposition is obviously not within the scope of these laws, and the antebellum branch of Jones & Day should look elsewhere for rules that prohibit interested persons from attending.

2. As applied, there is no violation of the sequestration rules

Even an incorrect application of the cited case law and rules to the facts of this case do not result in a violation. According to Kerschbaumer v. Bell, 112 F.R.D. 426, 426 (D.D.C. 1986) these rules "should be invoked sparingly," and under "exceptional circumstances" Sykes v. Brown, 90 F.R.D. 76, 77

(E.D. Penn. 1981) . ". . . a party is not entitled to invoke "the Rule of sequestration" or "The Rule" of Rule 615, Fed. R.Evid., as a matter of right, in oral depositions." BCI Comm. Systems, Inc. v. Bell Atlanticom Systems, 112 F.R.D. 154, 159 (N.D.Ala. 1986). The antebellum branch of Jones & Day has liberally put forth these rules without carefully considering their meaning or purposes.

The antebellum branch of Jones & Day does not make an effort to demonstrate good cause; instead they speculate about the unmaterialized "potential" and possibility of a disruptive atmosphere without providing any examples of actually disruptive behavior on the part of those who attended. (Brief in Support of Defendants' Motion to Compel Discovery and for Protective Order, page 7). Such "inchoate fear" does not satisfy the requirement of good cause where "plaintiffs do not suggest that defendants have harassed them or would learn legitimately secret information if present at plaintiff's depositions." Kerschbaumer, at 427. The antebellum branch has never stated or intimated any legitimate reason, as those enumerated in §9-11-26, "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" that would justify excluding four persons in business suits from the deposition. If Greg Hanthorn finds four extra persons in business suits intimidating, he must walk around in a constant state of fear at the antebellum branch of Jones & Day. It is clear that the antebellum branch of Jones & Day has not shown good cause for sequestration of any persons, witness or otherwise, at future depositions.

There are countervailing policy reasons for not applying §9-11-26 such as the "mandated openness process of the deposition procedure" BCI Comm. Systems Inc., 112 F.R.D. at 157 and the liberalization of access to the legal system in a democratic nation. As noted in BCI Comm. Systems Inc., " . . .without a protective order in hand, a lawyer has no right to insist that anyone, party or nonparty, be excluded from a deposition . . . pretrial discovery must take place in public unless compelling reasons exist for denying the

public access to the proceedings. . ." Id. at 157. There is also a growing trend toward nonparty access to depositions. As noted by Norman Davis in the University of Miami Law Review:

"In civil actions, seemingly innocuous contract, tort, or property disputes may have implications if, for instance . . . one or more of the disputants is a public figure, the dispute has political overtones, or if there is an impact on public land or programs. Where the public interest may be involved, parties should not settle disputes in semiprivacy."

Norman Davis, "Nonparty Access to Depositions in Florida;" 39 U of Miami L.R. 157, 165-6 (Nov. 1984).

The real purpose of defendants' motion was to keep the practices of the legal system, particularly the discriminatory ways of the antebellum branch of Jones & Day, shrouded in mystery from African-Americans. Until African-Americans are permitted to exercise their rights to their fullest, we are forced to turn to the legal system for protection. The antebellum branch of Jones & Day must not be permitted to taint the legal system by infusing its racist techniques into the process.

D. Summary

The issue in this discovery dispute is good faith. In fact, the bedrock of this entire litigation is good faith.

Harold Ivey and Bonny Associates did not act in good faith when they agreed to lease a building to Emmitt Stephens and continued adding conditions to make occupancy impossible. They employed a law firm to represent them that has not acted in good faith in aiding them in continuing their racial discrimination.

Good faith is an amorphous ingredient that is colored and commanded by a person or entity's philosophical, political and moral beliefs.

Until the philosophical, political and oral beliefs of the antebellum branch of Jones & Day are changed, this litigation has no chance of resolving the dispute between the parties or diminishing the racial discrimination that has now become the inflicted albatross of the antebellum branch of Jones & Day. This discovery blunder by counsel for these defendants

offers this Court an excellent opportunity to put into place things that will help resolve this dispute without costing this jurisdiction unnecessary hours of judicial time and countless dollars for the operation of this Court.

This Court should order as part of the sanctions four hours of educational training in racial sensitivity for Gary Hatch and Gregory Hanthorn. This training is not without precedent as it has recently been ordered by the federal court to members of the Ku Klux Klan in a Georgia case. This training could be provided by Reverend Joseph Lower and Dr. Anna Grant.

The four hours would be commensurate with the more than four hours lost by Emmitt Stephens from his gainful employment. This training should be in addition to the reimbursement of out-of-pocket attorney fees that this behavior has cost Emmitt Stephens.

Time is important to Emmitt Stephens in this case. Occupancy of the building in Newnan is important to Emmitt Stephens in this case. Important as these things are, nothing is more important than to diminish the racial discrimination practiced by Harold Ivey, Bonny Associates and the antebellum branch of Jones & Day in this case.

There was a supplementary response which follows. All of this legal work cost Emmitt Stephens over $6,000.00, and a loss of many months in getting to proceed with his redress.

The court granted Emmitt Stephens relief; however, only awarded him $1,500.00 of his legal fees. Needless to say, there can be no recovery for the humiliation of Emmitt Stephens in this adulterated process.

The supplement which follows is contained in its entirety with exhibits, as Attachment 7.

SUPPLEMENTARY RESPONSE TO THE ANTEBELLUM BRANCH OF JONES, DAY'S MOTION TO COMPEL

DISCOVERY AND FOR PROTECTIVE ORDER: The antebellum branch of Jones, Day acts as a hypocrite.[1]

This document is filed to supplement the response to the antebellum branch of Jones, Day's Motion to Compel Discovery and for a Protective Order.

The central issue before the Court at this time involves the personal use of a tape recorder by counsel at a deposition. There is an additional issue of who may be present at a deposition. Both of these issues involve the type of behavior by Emmitt Stephens' counsel that is permissible. The antebellum branch of Jones, Day has come to the Judge of this Court to change the behavior of Emmitt Stephens' attorney. The antebellum branch of Jones, Day tells the Court that Emmitt Stephens' attorney violated the law and rules of the State of Georgia. They further tell the Court that the behavior of counsel should be controlled by a court order that would require the payment of attorneys fees to the antebellum branch of Jones, Day for correcting the behavior of counsel. Regardless of how the issues are stated, they involve one subject -- behavior of counsel.

The issue before this Court is behavior of counsel -- the behavior off counsel for both parties. Have and are counsel for the parties conducting themselves properly and within the bounds of the law?

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1. Girard Boudreau, a partner of Jones, Day, complained publicly in the Fulton County Daily Report, the official legal organ of Fulton County, Georgia and the official newspaper of the Superior and State Courts of Fulton County (attached as Exhibit 2) that counsel for Emmitt Stephens used words and terms in his initial brief that were not in his firm's vocabulary. To be sure that "hypocrite" is not one of these words, the following definition is supplied: "One who pretends to be better than he or she is or to be pious or virtuous without really being so. Roget's II: the new thesaurus, gives as an example: "A hypocrite who prays on Sunday and cheats customers on Monday."

Counsel for Emmitt Stephens have responded to the charges by the antebellum branch of Jones, Day by asserting in the strongest way possible that Emmitt Stephens' counsel have followed the statutes and rules of the State of Georgia. Counsel for Emmitt Stephens have gone further than just defending their behavior, they have asserted misconduct on the part of the antebellum branch of Jones, Day in two arenas: (1) a court of law and equity and (2) in the real world. The behavior of the antebellum branch of Jones, Day does not pass muster in either this Court or in the real world. The behavior of the antebellum branch of Jones, Day in the real world is relative to this case because it sheds light on their "good faith."

Counsel for Emmitt Stephens has unabashedly proclaimed the antebellum branch of Jones, Day as an entity exhibiting racist behavior, and further as either being negligent or deceitful in their brief to the Court on the discovery issue now before the Court. Counsel wishes to add an additional derogatory designation to this already heavily labeled entity: The antebellum branch of Jones, Day acts as a hypocrite.

It is necessary that this additional label be applied to further illuminate the (lack of) "good faith" issue that is paramount here.

Justification of this supplemental labeling of the antebellum branch of Jones, Day stems from the public statement by Girard E. Boudreau defending its action in this case.

1. First Justification of Hypocritical Label: The "some of my best friends are . . ." defense.

In defense of its racist behavior, the antebellum branch of Jones, Day used the most common defense of a racist, i.e., "some of my best friends are . . . ." To quote exactly what Girard Boudreau said: "we count among our very good friends Coretta King, Andy Young and Maynard Jackson." (See Exhibit 2) The antebellum branch of Jones, Day's client, Harold Ivey, of Bonny Associates used somewhat the same defense to his racist behavior when he stated that "I rent to coloreds, I rent to Koreans . . .".

Nothing could be further from the truth than the implication that Coretta Scott King, Maynard Jackson and Andrew Young approve the behavior of the antebellum branch of Jones, Day and that the behavior of the antebellum branch of Jones, Day is not racist in the instances detailed in this case. The antebellum branch of Jones, Day should obtain an affidavit from either Coretta Scott King, Maynard Jackson or Andrew Young that the facts Emmitt Stephens and his counsel complain of as racist are not in fact racist. We all know that Coretta Scott King, Maynard Jackson and Andrew Young align with Emmitt Stephens and his counsel on their view of racial issues, and not the views indicated by the behavior of the antebellum branch of Jones, Day, Harold Ivey and Bonny Associates.

If anyone things differently, counsel for Emmitt Stephens announces "ready" if the antebellum branch of Jones, Day wishes to try its clients, Harold Ivey and Bonny Associates to the stipulated jury of Coretta Scott King, Maynard Jackson and Andrew Young. The "some of my best friends are . . ." defense of the antebellum branch of Jones, Day's racist behavior is hypocritical.

2. Second Justification of Hypocritical Label

Additionally, the label of "hypocrite" is justified under a fact specific incident that occurred in the same Jones, Day office, the office and firm that is "continuing the practice of Hansell & Post, before the same court-reporting company, and also at a deposition. The facts are as follows:

Counsel walks into a deposition where a tape recorder has been placed on the table. Opposing counsel asserts that it will be used for personal purposes and not as a substitute for the stenographic reporter. The counsel with the tape recorder had used a tape recorder at depositions before this time in addition to the stenographic record. Despite the distances that participants had travelled, opposing counsel refused to proceed wit the tape recorder and terminated the deposition. (A copy of the transcript is attached as exhibit to the motion for sanctions).

Angered by not being allowed the use of a tape recorder for personal use in addition to the stenographic reporter, counsel filed a brief with the court and asked that the entire case be dismissed by the court because the attorney had terminated the deposition. He told the court that the attorney terminating the deposition had behaved improperly and had violated the rules of the court.

All of these facts are similar if not identical to the facts of the case now before the Court.

One major difference between that case and the case we now litigate is that the counsel using the tape recorder was Paul Oliver of then Hansell & Post, whose practice is now being continued by the antebellum branch of Jones, Day. Paul Oliver, who has practiced law since 1974, has continued with the antebellum branch of Jones, Day. Yes -- these Jones, Day hypocrites were trying to tape record for their personal use. On the same 34th floor of the First Atlanta Towers, Jones, Day (continuing the practice of Hansell & Post) sought to tape record the entire deposition.

The Superior Court of Clarke County held under the law, that the tape recording was within the rights of Paul Oliver the Hansell & Post, Jones, Day lawyer. They were precluded from receiving their attorneys fees of $160.00 per hour because they were negligent in sending the hourly billing to the court within the five days required by the judge.[2]

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[2] The Order of Honorable Joseph J. Gaines, filed February 13, 1989, in Isaiah Hunter, III, and Hunter Grading Contracting, Inc. v. William C. Head, Hickory Shepis, et al., Civil No. SU-88-CV-0436, states in part (p. 3):

> However, the Court also finds that the defendants failed to timely file their affidavit documenting the expenses and fees which had been incurred as a result of the plaintiff's refusal to participate. The Court had granted the defendants five days from the date of the hearing held on January 27, 1989 in which to submit such evidence, and then granted the plaintiff five days from the receipt of this evidence in which to file a response.

CONCLUSION

Yes, continuing the practice of Hansell & Post, the antebellum branch of Jones, Day believes in a double standard of human behavior. Just like the racist double standard of this entire litigation.

The documentation of Hansell & Post continuing as Jones, Day case, Isaiah Hunter, III, and Hunter Grading Contracting, Inc. v. William C. Head, Hickory Shepis, et al., Civil No. SU-88-CV-0436 where Jones, Day attorney Paul Oliver used the tape recorder is made a part of this supplement as Exhibit 1. This exhibit includes the following documents:

Motion for Sanctions
Transcript of Deposition
Certificate of Effort to Resolve Discovery Dispute
Handwritten January 27, 1989 Order of Honorable Joseph J. Gaines granting Hansell & Post's Motion for Tape Recording
Order by Honorable Joseph H. Gaines on Sanctions
Brief in Opposition to Defendant Citizens Banking Company's Motion for Sanctions
Affidavit in Support of Motion for Sanctions
Brief in Support of Motion for Sanctions
Letter in Opposition to Sanctions

After the end of this problem with Jones, Day, there was the substitution of William B. Major as counsel for Harold Ivey and Bonny Associates. This is Attachment 9.

Upon entry in the case, William "Bill" Major pledged to Millard fairness, candor and open discovery. As far as everything Emmitt Stephens and his counsel knew, this was true

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However, the Court did not receive the defendants' affidavit until after the applicable time period had expired. The imposition of expenses and attorney's fees having been conditioned upon the timely receipt of the proper documentation thereof, its late filing will thus preclude such an award.

until the week before the scheduled date for the trial of the weeks following June 1, 1992. William "Bill" Major crawfished, reneged, and was outright untruthful as he slipped William "Bill" Campbell's name on the pretrial order after the close of the court on the Friday before June 1, 1992. He also included new, never discussed witnesses which followed William "Bill" Campbell's entry.

Emmitt Stephens Brought An Action In This Court For Redress Of The Racial Discrimination Of Harold Ivey And Bonny Associates. William B. Hill And Counsel For Harold Ivey And Bonny Associates Have Made Emmitt Stephens A Double Victim Of Discrimination.

Since bringing this action, Emmitt Stephens has been mistreated and abused by counsel representing Harold Ivey and Bonny Associates. Once William "Bill" Campbell entered the case, William B. Hill joined the list of people abusing Emmitt Stephens. Emmitt Stephens has been abused by Judge William B. Hill to the extent he was held in willful contempt of court on Monday, March 1, 1993 for conduct which under no stretch of the imagination could be held to be his conduct or impermissible conduct on his part.

The abusive treatment by counsel for Harold Ivey and Bonny Associates has been motivated by the extremely high net worth of Harold Ivey and Bonny Associates. This net worth of over one hundred million dollars ($100,000,000.00) has been incentive enough to encourage these attorneys to violate ethical standards and in the case of William "Bill" Campbell, legal standards.

William B. Hill And Millard Farmer Have A Long History of Personal Confrontation

William B. Hill was an Assistant Attorney General before becoming a judge. During this employment, William B. Hill defended many actions, from Batson actions, jury composition actions, sentencing discrimination actions, to judge disqualification actions based upon charges of racial discrimination and other unconstitutional conduct by State

officials. On many occasions in both the courts and in public forums, his opponent was Millard Farmer.

William B. Hill has changed his job title, but has not changed his opposition to Millard Farmer.

The background of William B. Hill as relates to Millard Farmer is contained in a previous motion to disqualify; Attachment 2. Additional evidence of previous and present bias will be presented at an evidentiary hearing.

William B. Hill Is Using His Position As Judge
Unethically And Often, Illegally And Unconstitutionally
For The Following P[illegible]oses That Will Be More
Fully Supported At An Evidentiary Hearing

(a) William B. Hill is pandering to William "Bill" Campbell, a local politician, to gain political support in William B. Hill's goal to obtain a more important judgeship than his present Superior Court judgeship.

(b) William B. Hill has a history of supporting acts of racial discrimination. William B. Hill has supported these acts of racial discrimination to obtain personal gain and benefit for himself.

(c) William B. Hill is continuing in this case his long pattern of supporting racial discrimination in order that he could obtain personal benefits and gains for himself.

(d) William B. Hill is continuing in this case his pattern of trying t o prevent African American persons from obtaining equality in the court system; this conduct William B. Hill engages in for person benefit to himself;

(e) William B. Hill has a long standing personal bias and prejudice against Millard Farmer and is using these proceedings to retaliate against Millard Farmer for the numerous times in both legal proceedings and public forums Millard Farmer has criticized William B. Hill for supporting acts of racial discrimination. Most vivid in memory of verbal confrontation between Millard Farmer and William B. Hill was a debate at West Georgia College at which Millard Farmer identified William B. Hill, then Assistant to the Attorney General of Georgia, as a "double-filled Oreo cookie."

William B. Hill Has Shown In This Case
His Bias And Prejudice Against Millard Farmer

And Thereby, Emmitt Stephens, In, Among Other Ways, The Following Ways. At An Evidentiary Hearing, Other Ways That William B. Hill Has Shown His Bias And Prejudice Will Be Presented.

(a) William B. Hill has prevented this case from being tried and has falsely stated various reasons for the delay while refusing to tell Millard Farmer the guidelines for getting this case to trial. The last example of this conduct occurred at the end of the hearing on March 1, 1993.

(b) William B. Hill has failed and refused to disqualify or allow a fair presentation of evidence about the reasons for disqualification of William "Bill" Campbell.

(c) William B. Hill has allowed William "Bill" Campbell to verbally abuse Emmitt Stephens and his counsel on numerous occasions. This continues to occur, despite continuous attempts for relief from the court.

(d) William B. Hill uses the lack of understanding of the law by reporters for the Fulton County Daily Report to create publicity that is little more than character assassination of Millard Farmer. Two examples of this conduct by William B. Hill are the September 8, 1992 hearing where William "Bill" Major and William "Bill Campbell were clearly improper in bringing a motion for sanctions against Millard Farmer. Instead of just ruling in a judicious manner, William B. Hill tried to protect the acts of William "Bill" Major and William "Bill" Campbell by sua sponte requiring Millard Farmer to redact a motion that had been ruled upon and was no longer pending before the court. The reporter for the Fulton Daily Report either did not understand the legal absurdity of requiring a previously decided motion to be repled, or chose to become a part of William B. Hill's show-boating and protection of William "Bill" Campbell. Realistically and most likely, William B. Hill was just successful in deceiving the reporter and diverting the attention from the sanctions motion that was improperly filed and had been used to delay Emmitt Stephens' trial.

It should be noted that this motion for sanctions was brought at the invitation of William B. Hill.

Another example of William B. Hill's use of the Fulton County Daily Report to participate in character assassination was the March 1, 1993 hearing.

At this March 1, 1993 hearing, the Fulton County Daily Report covered this proceeding with a good journalist, Trish Renaud[3], however, this journalist does not understand how and lacks the ability to understand the media show that William B. Hill and William "Bill" Campbell were staging.

William B. Hill used this charade of a hearing to allow William "Bill" Campbell to make self serving political statements for hours, while preventing Emmitt Stephens from even stating the detrimental effect the unethical conduct of William B. Hill and William "Bill" Campbell was having upon him and his family.

In both these examples, it was known to William B. Hill that the proceedings were being attended by reporters for the Fulton County Daily Report. Millard Farmer does not know the implications of the smiles and other facial gestures William "Bill" Campbell flashed in the direction of Trish Renaud at the March 1, 1993 hearing, but he does know that those gestures were not meant for the people supportive of Emmitt Stephens' case and Trish Renaud was the only other person left in the courtroom. Millard Farmer also knows that William B. Hill and William "Bill" Campbell were engaged in a media charade to prejudice Emmitt Stephens, and that a journalist lacking adequate knowledge of the law was unlikely to detect that charade.

William B. Hill's Order of Contempt Of Court
By Emmitt Stephens And Millard Farmer Was A
Legal Absurdity and Done As An Expression
Of William B. Hill's [sic]

There is a legal right to motion a court to disqualify an attorney. Millard Farmer exercised this right for Emmitt Stephens.

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3 There could be some question about the journalistic skills of Trish Renaud because in the article about the March 1, hearing she reported with gross inaccuracy that the preliminary injunction granted by the federal district court in Texas was to prevent prosecution of Millard Farmer for five counts of aggravated perjury. In the preceding paragraph, she properly identified the charge.

William B. Hill seized upon this opportunity to gain personal benefit for himself and vent his feelings of bias and hatred for Millard Farmer.

It is not the act of a courageous person to attack a person defending the rights of people who the majority of society do not like, much less want to have strong advocates in support of their legal rights.

Millard Farmer explained to William B. Hill in language so simple and understandable that even lay journalist Trish Renaud understood it well enough to repeat some of the explanation in the Fulton County Daily Report account of the March 1, 1993 hearing (Attachment 20).

William B. Hill chose to find Millard Farmer in contempt for many reasons. One important reason was that he felt it would be detrimental to him in defense of his reputation and client in proceedings in Texas where is not known. These Texas proceedings had been discussed in the March 1, 1993 proceeding by William "Bill" Campbell.

William B. Hill knew that a contempt finding would cost Millard Farmer and Emmitt Stephens many hours of unnecessary work to correct.

William B. Hill knew that the contempt charge would be given strong attention when leveled, but small attention when corrected.

William B. Hill issued the order of contempt against Emmitt Stephens and Millard Farmer without giving them an opportunity to present evidence to an independent, unbiased trier of fact.

CONCLUSION

William B. Hill perceives this case as a win-win situation for him. He wins favor with a politician that he needs because William B. Hill lacks political support in the African American community. He wins in exercising his personal bias against Millard Farmer. William B. Hill is a judge because he was the yes/agent of the Attorney General for years. He is certainly not a judge because he is an individual who is capable of dispensing fairness.

The motion must end with a sad statement about the legal community.

There are hundreds of people that are seeking lawyers to represent them in cases involving racial and sexual

discrimination. These individuals cannot obtain lawyers. The reasons are many, but the acts of William B. Hill in this case certainly demonstrate a few. There are thousands of people in this State who are not adequately represented by lawyers. Lawyers who advocate causes not in the mainstream of society's views and lawyers who represent clients who pursue unpopular litigation should not be condemned to a life of eternal hell in the very court system that holds our constitutional concepts together.

This case must be now brought into balance. William B. Hill has obtained his points from William "Bill" Campbell. It is now time that justice interfere with this corrupt courtship.

WHEREFORE, Plaintiff requests that this Court:

a) voluntarily recuse William B. Hill as judge in this case pursuant to Uniform Superior Court Rule 25;

b) or, in the alternative, turn this motion over for assignment for hearing to another judge pursuant to the procedures set out in Rule 25;

c) that the newly assigned judge grant an evidentiary hearing on the issues set out in this motion;

d) that William B. Hill be disqualified as judge in this case;

e) that all previous rulings regarding the disqualification of William B. Hill and William "Bill" Campbell, and associated issues, be declared null and void and be resubmitted to an unbiased and independent judge;

f) that William B. Hill's conduct in this case violates both the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution as well as the free speech provision of the First Amendment to the United States Constitution; and,

g) for such further relief as justice requires.

Respectfully submitted,

Millard Farmer
P.O. Box 1728
Atlanta, GA 30301
(404) 688-8116
COUNSEL FOR
EMMITT H. STEPHENS, JR.

[NOTE: THIS APPENDIX E DOES NOT INCLUDE THE NUMEROUS ATTACHMENTS TO THE ORIGINAL MOTION, TOTALLING MORE THAN 200 PAGES]

Supreme Court, U.S.
FILED
JUL 22 1994
OFFICE OF THE CLERK

No. 94-0017

In The

Supreme Court of the United States

October Term, 1994

EMMITT H. STEPHENS, JR.,

Petitioner,

vs.

HAROLD W. IVEY and BONNY ASSOCIATES,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeals Of Georgia

RESPONDENTS' BRIEF IN OPPOSITION

WILLIAM H. MAJOR
Counsel of Record
WILLIAM B. BROWN
1940 Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-2268

Attorneys for Respondents

Please Serve:
WILLIAM H. MAJOR
1940 Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-2268

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
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QUESTIONS PRESENTED

1. Whether the Petitioner's right to freedom of speech, and his rights to equal protection and due process, were violated by the trial judge's finding that Petitioner's motions to disqualify the trial judge were legally insufficient?

2. Whether Petitioner's equal protection and due process rights were violated by the trial court's order prohibiting Petitioner, on grounds of relevancy, from presenting evidence to the jury of matters occurring after the filing of the Petitioner's civil rights complaint which related to matters occurring during a discovery deposition and employment of Respondents' counsel?

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B. Petitioner's equal protection and due process rights were not violated by the trial court's order prohibiting Petitioner, on grounds of relevancy, from presenting evidence to the jury of matters occurring after the filing of Petitioner's civil rights complaint which related to matters occurring during a discovery deposition and employment of Respondents' counsel 11

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EMMITT H. STEPHENS, JR.,

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Respondents.

Petition For Writ Of Certiorari To The Court Of Appeals Of Georgia

RESPONDENTS' BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondents, Harold W. Ivey and Bonny Associates, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by the Petitioner, Emmitt H. Stephens, Jr.

OPINIONS BELOW

The opinion of the Court of Appeals of Georgia is reported at 212 Ga. App. 407, 442 S.E.2d 248 (1994). The Supreme Court of Georgia denied the Petition for Writ of

Certiorari on April 29, 1994. Both decisions are reproduced in the Appendix to Petitioner's Petition for Writ of Certiorari.

STATEMENT OF THE CASE

This is a civil rights action filed by Emmitt H. Stephens, Jr. (hereinafter "Petitioner") in the Superior Court of Fulton County, Georgia against a partnership, Bonny Associates, and its principal, Harold W. Ivey (hereinafter "Respondents"), in which it was alleged by Petitioner that he was denied the right to rent space in a shopping center on account of race. [R,4-14]

In late October, 1989 [T-331], Petitioner called the office of Respondents to inquire about the availability of a vacant space in the strip shopping center owned by Respondents in Newnan, Georgia. The vacant space contained almost 10,000 square feet and was unimproved, having been formerly occupied by a Revco store. The next day Respondents' agent, Calvin Tatum, met with Petitioner and his wife at the site and showed the space. Petitioner described to Mr. Tatum the fact that he and his wife wanted to operate a teen center for the purpose of providing a recreational area for teenagers. [T-331]

Mr. Tatum quoted the rental rate for Petitioner and in due course furnished Petitioner with the printed form of lease usually used by Respondents for the rental of space in the strip shopping center. [T-331]

During the course of negotiations for the space, Petitioner informed Respondents that instead of operating a

teen center, he and his wife had decided they wanted to operate a supper club, or night club, and that he would seek to obtain a beer and wine permit. [T-331] That changed the complexion of the negotiations because the operation of a night club facility would involve the expenditure by Petitioner of considerable sums of money to improve the premises, including things as lighting, floor covering, kitchen equipment, bar equipment, partitioning and the installation of additional restrooms. Respondents were concerned that Petitioner had neither the financial ability nor the experience to successfully operate a night club facility, and that contractors employed by him to make improvements on the premises might file liens on the property.

Respondents had previously owned a shopping center in Atlanta where a night club had been located, and Respondents were fully aware of the problems which a landlord could encounter in a night club operation. These problems include additional expenses for security, utilities and the cleanup of the parking facility because of the fact that night club customers, after an evening of drinking, tend to leave empty beer bottles and empty cups in the parking lot and often become unruly. [T-339]

Respondents' agent advised Petitioner that Respondents would need to see a financial statement [T-343-344] and that Petitioner would have to make arrangements to put up a security deposit or bond or otherwise guarantee the fact that any improvements to the premises would be paid for. [T-340]

Respondents furnished Petitioner a key so that he could have his contractors and architect examine the premises. [T-329]

The requested financial statement revealed that Petitioner had a net worth of approximately $53,000 made up principally of antique furniture (which later turned out to be simply reproductions) having a claimed value of some $31,000, and jewelry and diamonds having a value of some $10,000. [T-344]

Some eleven days later, Petitioner furnished a new financial statement indicating a net worth of several hundred thousand dollars, made up in the main of promissory notes said to be owed to Petitioner's company, rather than Petitioner individually. [T-346]

When the negotiations did not go to suit Petitioner, he and his wife employed a lawyer in Newnan, Georgia by the name of George Rosenzweig, who filed a quiet title action in the Superior Court of Coweta County (a court obviously without any jurisdiction), claiming that somehow Petitioner and his wife had acquired a real property interest in the shopping center and alleging that Petitioner and his wife intended to operate a teenage center in the shopping center, with no mention being made of the operation of a night club. [T-349] Respondents turned the matter over to an attorney in Newnan, Georgia, Mr. Littleton Glover, and Mr. Glover undertook to defuse the matter by attempting to negotiate a lease with Petitioner and his counsel. There were negotiations back and forth with respect to whether or not Mrs. Stephens was to sign the lease and as to whether or not a bond was to be

posted or some security given to cover the improvements to be made.

Finally, Mr. Glover and Mr. Rosenzweig came very close to reaching an agreement and Mr. Glover tendered to Mr. Rosenzweig a lease and tri-party agreement covering the deposit of construction funds. Respondents agreed that Petitioner's wife did not have to sign the lease and, according to the testimony of Mr. Glover, he thought the matter was settled; that the lease would be signed; and that the parties would go forward. [T-351]

Instead, Petitioner employed his present counsel, Mr. Millard Farmer, who brought this action contending that the lease was not consummated between Petitioner and Respondents because of the fact that Petitioner was an African American.

This is the single straightforward issue that was tried by the court and a jury in a trial that lasted almost two weeks before Honorable William B. Hill, Jr., one of the judges of the Superior Court of Fulton County.

On the trial, the evidence was substantially that set forth by Respondents' counsel in his opening statement to the jury, namely, that Respondents, and particularly Harold Ivey, did not make business decisions on the basis of race, and specifically in this case race had nothing to do with the business dispute. On the contrary, the evidence was that Mr. Ivey had grown up poor; had worked his way into a successful construction business; had never been accused of racial bias or prejudice; had never been a defendant in an action brought on the basis of race; had hired many African Americans; and had been

associated with many African Americans during his business career. [T-323] During his business career, Mr. Ivey was the first general contractor in the Atlanta area to insist that white brick masons and black (or African American) brick masons work side by side on a project even though they belonged to different unions. [T-324] Mr. Ivey had a history of non-discriminatory conduct, including the fact that he had rented to at least one African American in the very shopping center in question, and had, in fact, owned a building in which he rented a night club to an African American, a Mr. J.O. Wyatt. [T-325] That African American businessman appeared as a witness on behalf of Respondents and testified that Respondents had an exemplary record as a non-discriminatory landlord.

It is important to note that Petitioner in his appeal below did not challenge the fairness of the actual trial; the fairness of the evidentiary rulings during the trial; the fairness of the charge given by the court; and the fairness of the verdict in favor of Respondents rendered by the jury. In fact, Petitioner did not even bother to provide the Georgia Appellate Courts with a transcript of the actual two week trial.

Instead, Petitioner complained of matters that occurred before the trial and of events that were collateral to the issue tried by the jury.

During the course of the trial, Petitioner attempted to introduce evidence of the fact that at a deposition in the office of Respondents' former counsel, the law firm of Jones, Day, Reavis & Pogue, a confrontation occurred which Petitioner's counsel described as racial in nature

because of the fact that Petitioner and his counsel were served coffee by an African American dressed in the uniform of a maid. [R,93] Judge Hill would not allow that evidence introduced into the trial and Petitioner contended that ruling was error.

Petitioner's counsel complained of the entry into the case of Mr. William C. Campbell, one of the lawyers for Respondents, as being improper and contended it was error for the court to fail to disqualify Mr. Campbell from appearing as a lawyer in the case. [R,219-236]

During preliminary motions the trial judge held Petitioner's counsel in contempt because he flagrantly violated an order of the court in the presence of the court. This led to Petitioner's counsel filing various motions of one kind or another in an attempt to disqualify the trial judge. Each motion was denied, as the trial judge found that they were legally insufficient. [R,560]

Now Petitioner claims his constitutional rights under the First and Fourteenth Amendment were violated by the trial court's finding that Petitioner's Motions to Disqualify the trial judge were without any merit. Petitioner also complains that his constitutional rights were violated because the trial judge excluded on grounds of relevancy those matters which occurred during a deposition after the complaint was filed. The trial court was upheld on appeal by the Georgia Court of Appeals.[1]

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[1] Petitioner initially appealed to the Georgia Supreme Court which transferred the appeal to the Georgia Court of Appeals. The latter affirmed and the Petitioner's Petition for the Writ of Certiorari to the Georgia Supreme Court was denied.

SUMMARY OF THE ARGUMENT

1. This case presents no special or important reasons for exercise of the Court's discretion to review the case on writ of certiorari. The Petition for Writ of Certiorari fails to demonstrate that there is any compelling reason, as contemplated by Rule 10 of this Court, for granting the writ of certiorari.

2. The trial court was correct in finding Petitioner's Motions to Disqualify to be legally insufficient and in excluding as irrelevant certain matters which occurred after the complaint was filed.

ARGUMENTS AND AUTHORITIES

I.

REASONS FOR DENIAL OF WRIT OF CERTIORARI

This case presents no special or important questions of law for review by this Court. The Petition for Writ of Certiorari fails to demonstrate any compelling reason, as contemplated by Rule 10 of this Court, for granting the writ of certiorari. Indeed, no compelling reasons exist because the decision of the Georgia Court of Appeals does not conflict with the decision of another state court of last resort nor that of a United States Court of Appeals. Nor has the decision of the Georgia Court of Appeals decided an important question of federal law either undecided by this Court or in a way that conflicts with this Court's decisions.

This is simply an ordinary civil rights case decided adversely to Petitioner by the jury after a two week trial. There are no novel or important questions to be decided.

It is a case where Petitioner's counsel found the trial judge not to his liking and embarked upon a campaign to disqualify him by using various tactics without success. The trial judge found that Petitioner's Motions to Disqualify were legally insufficient. That is, Petitioner failed to present facts showing grounds for disqualification. This ruling was affirmed on appeal. Thus, Petitioner now seeks to have this Court review the sufficiency of his Motions to Disqualify the trial judge.

Likewise, Petitioner is dissatisfied with the trial court's ruling on the relevance of certain evidence offered. This decision was likewise affirmed by the Georgia Court of Appeals. Petitioner now asks that this Court review the trial court's ruling on this evidentiary question. However, this should prove to be rather difficult given the fact that Petitioner did not provide the Georgia Appellate Courts with a transcript of the actual trial. Only selected portions of the proceedings below were incorporated into the appellate record. Petitioner has failed to show here any error on the part of the trial judge.

This is simply a case of a disgruntled litigant who, after losing his case at the hands of a jury, now seeks review by this Court. Petitioner has failed to show that the decisions of the trial judge and Georgia Court of Appeals are in conflict with established law and precedent. Thus, nothing is presented for review by this Court and the Petition for Writ of Certiorari should be denied.

II.

THE TRIAL COURT AND GEORGIA COURT OF APPEALS WERE CORRECT.

A. Petitioner's right to freedom of speech, and his rights to equal protection and due process were not violated by the trial judge's finding that Petitioner's Motions to Disqualify the trial judge were legally insufficient.

The procedure in Georgia for disqualification of a trial judge is patterned after the federal procedure. That is, a party is required to file a timely and sufficient affidavit showing the facts and reasons for the belief that bias or prejudice exists; the trial judge must then determine the legal sufficiency of the affidavit; and if sufficient, another judge must then hear the motion. See 28 U.S.C.A. § 144; Georgia Uniform Superior Court Rule 25. Under both the Georgia and federal procedure, only after the legal sufficiency of the affidavit is determined does it become the duty of the judge to proceed no further in the case. *United States v. Azhocar*, 581 F.2d 735, 738 (1978); *United States v. Olander*, 584 F.2d 876, 883 (1978); Georgia U.S.C.R. 25.3.

The trial court determined that Petitioner's affidavits in support of the three Motions to Disqualify were legally insufficient. That is, the affidavits did not present *facts* showing bias or prejudice which would impair or impede impartiality of judgment. The affidavits presented nothing but unsupported conclusions, opinions and speculation. In addition, alleged bias or prejudice against a party's attorney, rather than the party, is not, per se,

grounds for disqualification. *Houston v. Cavanagh*, 199 Ga. App. 387, 388 (405 S.E.2d 105) (1991). The Georgia Court of Appeals affirmed the trial court and found that the Petitioner "has not established a legally sufficient affidavit so as to require a recusal hearing before another judge." *Stephens v. Ivey*, 212 Ga. App. 407, 408, 442 S.E.2d 248 (1994).

Examination of the affidavits set forth by Petitioner in Appendix E confirms that both the trial court and the Georgia Court of Appeals were correct in their finding that the affidavit was legally insufficient. Since Petitioner failed to present a legally sufficient affidavit in support of his Motions to Disqualify, the trial judge was correct. Petitioner has failed to show any constitutional violation in this regard.

B. Petitioner's equal protection and due process rights were not violated by the trial court's order prohibiting Petitioner, on grounds of relevancy, from presenting evidence to the jury of matters occurring after the filing of Petitioner's civil rights complaint which related to matters occurring during a discovery deposition and employment of Respondents' counsel.

Petitioner contends that his constitutional rights were violated because the trial court excluded as not relevant certain evidence related to matters that occurred during a discovery deposition and the employment of Mr. Campbell as counsel for Respondents. The trial court found that "the relevant point of inquiry is whether Mr. Stephens was wrongly denied a lease based upon his race." [T-Excerpt 6]

On appeal to the courts below, Petitioner recognized that "the general rule" in Georgia is that " 'similar acts or omissions on other and different occasions are not generally admissible.' *Skil Corp. v. Lugsdin*, 168 Ga. App. 754(1), 309 S.E.2d 921 (1983)." [Petitioner's Brief filed in the Georgia Supreme Court, pp. 44-45.]

Petitioner argued that the proffered evidence should have been admitted as an exception to the general rule where such evidence of similar acts "may be admitted 'if relevant to an issue in the case and if the evidence does not place too great a danger of undue consumption of time, confusion of issues, undue prejudice or unfair surprise.' *Charles Parrott & Assoc. v. Hunt*, 167 Ga. App. 106, 109(2), 305 S.E.2d 879 (1983)." [Petitioner's Brief filed in Georgia Supreme Court, p. 45.]

Thus, the issue here is nothing more than an ordinary question of relevancy. Under Georgia law, such a question of relevancy is within the discretion of the trial court. *Parker v. Clickener*, 193 Ga. App. 321, 387 S.E.2d 587 (1989).

Petitioner failed to demonstrate in the courts below that the trial court abused its discretion in excluding post-litigation matters on the grounds of relevancy. This is especially so where Petitioner failed to provide the Georgia Appellate Courts with a transcript of the actual trial and therefore there was no record to review to determine whether there was an abuse of discretion. In addition, Petitioner failed to demonstrate any harmful error in the exclusion of the evidence. Therefore, Petitioner's complaint in this regard is without any merit.

CONCLUSION

This case presents nothing more than a disgruntled litigant who, after losing his case at the hands of a jury, complains of vague constitutional violations by the trial judge. The Petition fails to demonstrate any important or compelling reason for exercise of this Court's discretion in granting the Writ of Certiorari. In fact, the Petition fails to even demonstrate that any error was committed by the trial judge. For these reasons, Respondents pray that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

WILLIAM H. MAJOR
WILLIAM B. BROWN

Attorneys for Respondents

Please Serve:

WILLIAM H. MAJOR
Counsel of Record
1940 Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-2268